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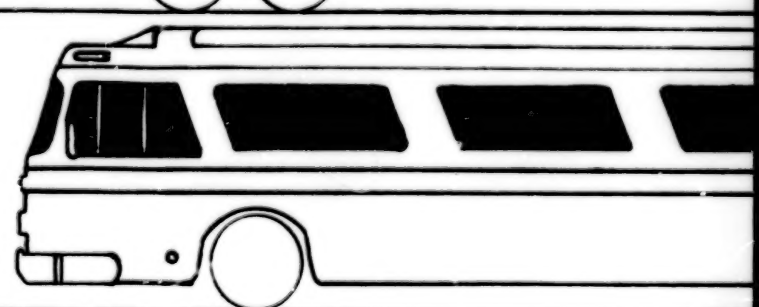
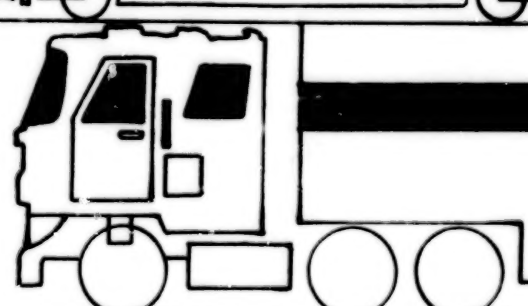
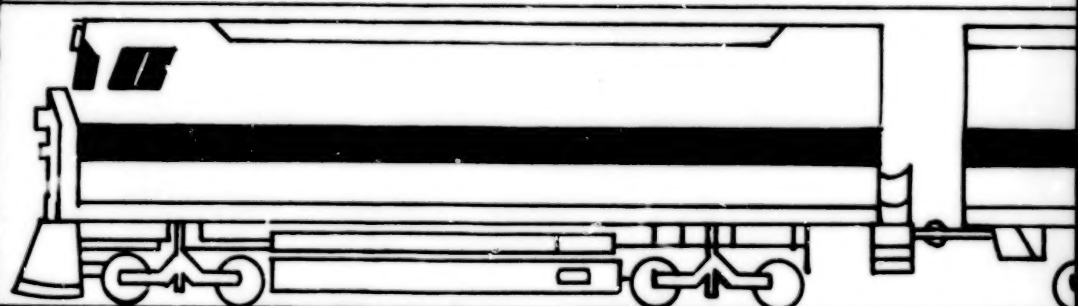
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Interstate Commerce Commission 1985 Annual Report



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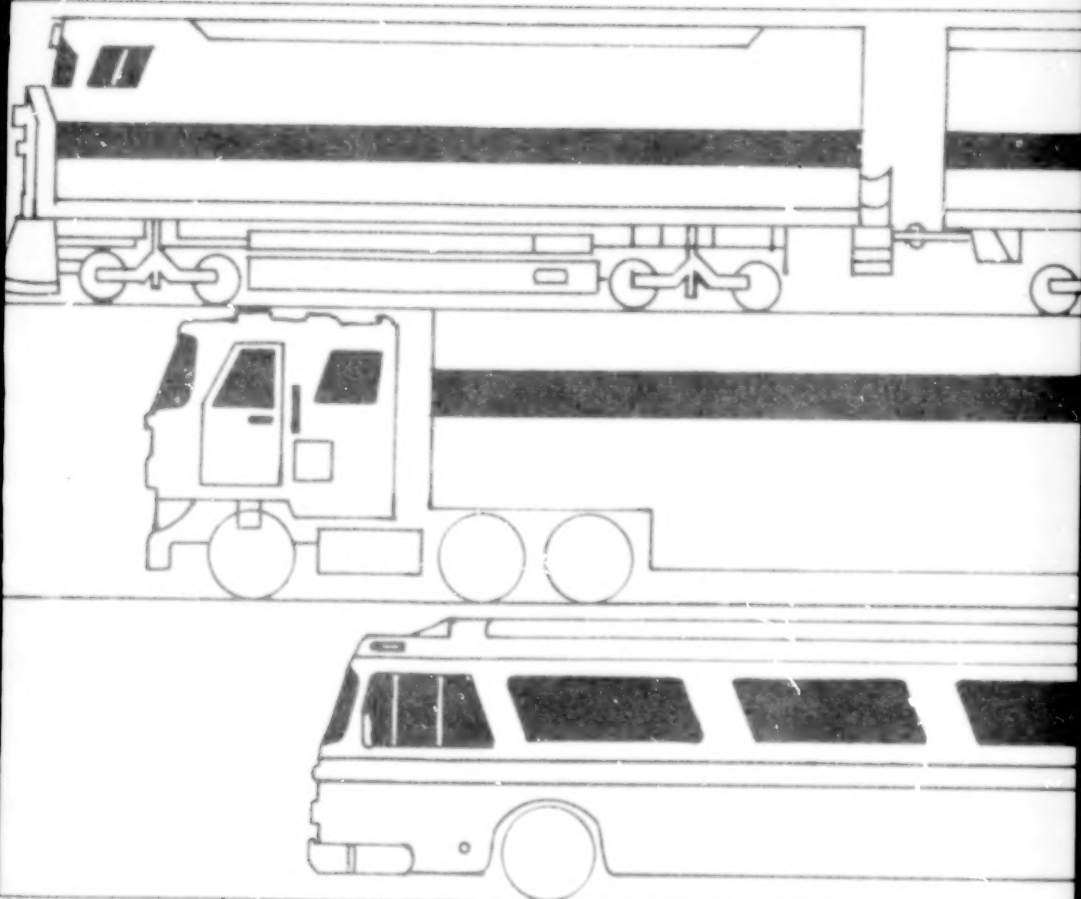
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Interstate Commerce Commission

1985 Annual Report



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LETTER OF TRANSMITTAL

Washington, D.C., April 4, 1986

It is my pleasure to submit the ninety-ninth Annual Report of the Interstate Commerce Commission, in accordance with the Interstate Commerce Act.

The report generally embraces the fiscal year ended September 30, 1985, except in the discussion of significant actions that transcend the 12-month period, or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the 1985 fiscal year appears in Appendix D.

Heather J. Gradison
Chairman

THE COMMISSION

(As of September 30, 1985)

	<i>Appointed</i>	<i>Term Expires Dec. 31</i>
Reese H. Taylor, Jr., Chairman (R) Nevada.....	1981	1983*
Heather J. Gradison, Vice Chairman (R) Ohio...	1982	1988
Malcolm M.B. Sterrett (R) Maryland.....	1982	1987
Frederic N. Andre (R) Indiana.....	1982	1987
J.J. Simmons, III (D) Oklahoma.....	1984	1990
Paul H. Lamboley (D) Nevada.....	1984	1989
Andrew J. Strenio, Jr. (D) Maryland.....	1984	1985

Commissioner Heather J. Gradison was appointed Chairman of the Commission by President Reagan on December 13, 1985. Commissioner J.J. Simmons, III was elected Vice Chairman by his colleagues on December 18, 1985. Commissioner Simmons and Commissioner Paul H. Lamboley, Jr. were each confirmed to another term of office by the Senate in March 1986.



The ICC Commissioners. From the left, Commissioner Frederic N. Andre; Vice Chairman J. J. Simmons, III; Chairman Heather J. Gradison; Commissioner Malcolm M. B. Sterrett; and Commissioner Paul H. Lamboley.

*Chairman Taylor was reappointed to a term ending December 31, 1985.



Functions and Responsibility

The Interstate Commerce Commission is an independent Federal Commission responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the Commission attempts to ensure that competitive, efficient and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 38,276 for-hire companies providing surface transportation in the U.S. These companies include railroads, trucking firms, bus lines, water carriers, one coal slurry pipeline, freight forwarders, and transportation brokers.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC was formerly authorized to have 11 Commissioners, each with a seven-year term of office. However, in August 1982 the Congress passed, and the President signed into law, legislation which reduced the ICC's strength from 11 to seven Commissioners as of January 1, 1983, and which will reduce that number even further—from seven to five Commissioners—effective January 1, 1986. Those persons appointed to be Commissioners on or after January 1, 1984, are authorized to serve only five-year terms. As fiscal year 1985 came to a close, the ICC had a complement of seven Commissioners.

How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate

specific authorities to the Commission's 14 bureaus and offices.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental agencies. In addition, the Chairman is generally responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and
4. Development and utilization of effective, expert staff support for the fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission or assumes the Chairman's duties during the Chairman's absence or illness. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, or discipline of Interstate Commerce Commission practitioners.

During fiscal year 1985, the Commission's activities were carried out through an organizational structure consisting of the Commission's bureaus and offices as follows:

- Small Business Assistance Office—functions as a clearing house for resolution of small-business



problems relative to surface transportation regulation and advises the Commission on the nature and status of such problems.

- Office of Public Affairs—furnishes information to the general public and the media concerning ICC decisions and activities; conducts briefings for the media and U.S. and foreign visitors; and prepares the ICC's Annual Report to Congress.
- Office of Legislation and Governmental Affairs—analyzes legislative proposals; assists in the development of the Commission's own legislative proposals; aids Congress in drafting of legislation; assists in the preparation of testimony to be presented before Congressional committees; and assists Members of Congress and other representatives of the 50 states with matters pertaining to the work of the Commission.
- Office of Human Relations—manages the Commission's efforts to provide equal employment opportunity for all employees and applicants, and provides training in the area of human relations.
- Office of the Managing Director—manages the Commission's day-to-day operations.
- Office of the Secretary—serves as the Commission's documentation center and is responsible for the issuance of the Commission's decisions and other legal documents.
- Office of the General Counsel—renders legal opinions to the Commission, and defends Commission decisions challenged in court.
- Office of the Special Counsel—contributes to the public-interest record in Commission proceedings, and assists individuals, consumer groups, small communities, small shippers, and public utility commission officials participating in the proceedings.
- Office of Hearings—staffed by Administrative Law Judges, this office conducts the Commission's hearings.
- Office of Transportation Analysis—conducts economic and statistical analyses of the transportation industry, regulation, and specific Commission proceedings, and provides economic advice to the Commission upon need or request.
- Office of Proceedings—processes formal ICC cases pertaining to operating rights, financial matters, rates, and competitive practices.
- Office of Compliance and Consumer Assistance—monitors the activities of railroads, trucking companies, barge lines, freight forwarders, and rate bureaus to ensure compliance with ICC policies, and assists the public in the resolution of complaints against ICC-regulated companies.
- Bureau of Accounts—concerned with the accounting aspects of economic regulation, this office prescribes uniform accounting rules, reviews various financial reports, and conducts audits of the pertinent records of transportation firms.
- Bureau of Traffic—monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they become effective.

YEAR IN REVIEW

On October 12, 1984, the Congress passed a Continuing Resolution which appropriated \$48 million for Commission operations in fiscal year 1985. On October 19, the Commission's Managing Director reported to the Commission that substantial personnel and nonpersonnel reductions would be required for the Commission to remain within the \$48 million appropriation, and on October 25, the Commission voted to seek a supplemental appropriation to provide funding for 984 staff-years. At this time, the Commission requested the Managing Director to prepare a contingency plan under which the Commission could complete the fiscal year with only the \$48 million appropriation. It also approved reductions in force to reduce personnel to levels requested in the supplemental appropriation, and froze expenditures for various personnel items.

In November of the past fiscal year, the Commission revised the list of state agencies designated to receive environmental notices from railroads when the carriers propose to abandon track. The ICC also certified intrastate regulations proposed by the States of Indiana and Montana, and thereby permitted those states to continue regulation of intrastate rail transportation. During this month, a formal request for \$4,463 million in supplemental funds was transmitted to Congress.

In December, the Commission decided that it would not reconsider its decision not to update railroad tank car allowances.

Beginning in January 1985, the Commission undertook the update of the monthly Railroad Freight Price

Index produced by U.S. Department of Labor's Bureau of Labor Statistics in cooperation with the ICC. This index will now be based on records from the 1982 Waybill File rather than the 1976 file. The revision should substantially improve the relevance of the index to present rail traffic. Various additional types of data for contract and exempt traffic were incorporated into the index to reflect changes since 1979 that were made possible by new regulations.

On January 2, 1985, the Commission adopted final rules for the calculation, submission, and processing of a new, all-inclusive index of railroad costs. These rules are used for the calculation of the quarterly Rail Cost Adjustment Factor (RCAF).

On January 18, an emergency plan devised by the Commission's Managing Director recommended the furlough of every employee for two days per pay period from April 1985 until the end of the fiscal year to permit the Commission to complete the year within its \$48 million appropriation. On January 24, the Commission approved the Managing Director's recommended emergency plan. On January 25, the Commission also issued a final 1984 Cost Recovery Percentage (CRP), which continued the use of the 1983 CRP.

During the month of January, the Commission also instituted a proceeding to obtain additional evidence regarding the Gulf & Mississippi Railroad Corporation's petition to exempt its acquisition and operation of approximately 713 miles of track known as the East Mississippi lines from the Illinois Central Gulf Railroad Company. The Commission certified

intrastate regulations established by the States of Georgia, Iowa, Missouri, and New Mexico, and thus allowed them to continue the regulation of intrastate rail transportation. The ICC also adopted revised credit regulations for all modes.

On February 4, President Reagan's fiscal year 1986 budget was transmitted to Congress, and included the Commission's requests for \$51.16 million for fiscal year 1986 and \$1 million for fiscal year 1985 to cover the cost of the January 1985 government-wide pay increase. On February 8, the Commission's Office of Transportation Analysis provided the Commission with a study of competitive and marketing factors identified in a proceeding involving the Norfolk Southern Corporation's acquisition and control of North American Van Lines, Inc. The analysis included an evaluation of Norfolk Southern's liability to affected employees of North American, and demonstrated that the transaction would not be anticompetitive and that motor carrier employees were not entitled to the benefits as "affected rail employees."

In March, the Commission sought comments on proposed rules to govern its handling of competitive-access issues. The contemplated rules arose from an earlier proceeding where the Commission encouraged railroads and shippers to discuss and attempt to resolve problems arising from implementation of the Staggers Act. It dismissed, after settlement, the Consolidated Rail Corporation (Conrail) as a party from a dispute over the reasonableness of rates for chlorine. Fi-

nally, Congressman James J. Florio, Chairman of the Subcommittee on Commerce, Transportation, and Tourism of the House of Representatives' Committee on Energy and Commerce, requested that the ICC assist the subcommittee in analyzing certain aspects of the recommendation by the United States Department of Transportation that Conrail be sold to the Norfolk Southern Corporation.

In April, the Commission sought comments on rules governing the manner in which it considers product and geographic competition in determining railroad rate reasonableness. The ICC denied a petition by the Kansas City Terminal Railway Company seeking additional compensation for performing directed service over lines of the Chicago, Rock Island and Pacific Railroad Company, though a petition to reopen was later granted.

The Commission dismissed Pittsburgh & Lake Erie's (P&LE) complaint seeking prescription of joint rates between P&LE and Conrail, and seeking a finding that Conrail's cancellation of its joint rates with P&LE constituted an unreasonable practice. An appeal is pending in the United States Court of Appeals for the District of Columbia Circuit.

In the same month, the Commission noted that the Milwaukee Road's trustee no longer represented an operating railroad. Therefore, the unresolved aspects of the reorganization no longer involve a railroad subject to the Commission's jurisdiction. The Commission does, however, retain jurisdiction over transactions involving the trustee's disposition of railroad operating property.

The ICC also adopted rules that provide that prior review of trackage rights agreements between railroads will no longer be necessary unless the agreements are included in major railroad consolidation actions pending before it. The Commission additionally proposed an exemption to allow railroads to issue most securities without first seeking formal Commission review.

The Commission also issued an advance rulemaking notice initiating a broad review of car hire regulation (except for boxcars). The Commission suspended car hire updates for 1983 and proposed suspension for 1984 and later years, pending completion of review of car hire regulation. The Supreme Court denied the ICC's certiorari petition in the export coal and boxcar exemption proceedings.

In other matters, on April 1, 1985, the Commission's Upward Mobility Training Agreement was reviewed and extended for two years by the U.S. Office of Personnel Management and on April 15 Commission-wide employee furloughs commenced.

In May 1985, the Commission's revised credit regulations became effective. The Commission responded to Congressman Florio's request to prepare an analysis of the issues raised by the proposed acquisition of Conrail by Norfolk Southern, and set a procedural schedule for the receipt of evidence. During the month, the ICC reasserted its jurisdiction over export coal transportation and boxcar joint rates, and withdrew the car hire provisions of the boxcar exemption. A proceeding also was instituted to

exempt rail shipments made subsequent to a contract agreement, but prior to the contract's effective date.

On May 15, the Commission distributed *Administrative Issuance 8-710* updating the Commission's Equal Employment/Affirmative Action guidelines after an extensive in-house review, comment, and re-drafting process involving all of the Commission's bureau, office, and field installations.

During the month of June, the Commission reopened the boxcar exemption for further consideration of the joint-rate exemption. It accepted as complete for consideration an application filed by the Chicago and North Western Transportation Company to construct a line in the Powder River Basin in Wyoming.

The period for the filing of comments on the Conrail study closed during the month, and the ICC established revenue-to-variable cost (r/vc) ratios for future movements of nonferrous recyclables and set r/vc ratios for prior years to be used in determinations of reparations where revenues exceeded applicable maximum ratios.

On June 1, 1985, the Commission issued an updated listing of minority and female owned motor carriers based on voluntary responses to direct mail surveys of all carriers that received new operating authority since the Commission's last update, and of those carriers previously identified as being minority or female owned.

On June 14, 1985, the Commission approved the Managing Director's recommendation to suspend furloughs effective June 17, pending

final Congressional action on House-approved supplemental appropriations of \$3.65 million.

In July, the ICC denied an application filed by 13 railroads to enter into car service and car hire pooling agreements covering general service freight cars. The Union Pacific Corporation (Union Pacific), the Missouri Pacific Railroad Company (Missouri Pacific), and the Missouri-Kansas-Texas Railroad Company (MKT) notified the Commission of their intention to file an application seeking approval of Union Pacific's proposed acquisition and control of MKT and the subsequent consolidation of MKT into Missouri Pacific. The Commission voted in open conference to adopt changes in its market-dominance-competition guidelines, including two changes related to the burden of proof.

During the month of August, a small group of the Commission's staff who were detailed to Congressman Florio's subcommittee completed studies concerning traffic diversion that would result from the proposed Conrail-Norfolk Southern consolidation, and the viability of two regional carriers in the eastern United States: Guilford Transportation Industries, Inc., and the Pittsburgh and Lake Erie Railroad Company. Oral hearings on a major merger proceeding involving the Atchison, Topeka and Santa Fe Railroad and the Southern Pacific Transportation Corporation were also completed.

On August 15, 1985, President Reagan signed the fiscal year 1985 Supplemental Appropriations Act, P.L. 99-88, which provided an addi-

tional \$3.1 million for Commission salaries and expenses.

On September 3, 1985, the Commission issued a final decision regarding nationwide coal rate guidelines which adopts constrained market pricing (CMP) as the analytical framework for assessing the maximum level of coal rates. Under CMP, a captive coal shipper should not be required to pay more than is necessary for the rail carrier(s) involved to earn adequate revenues; it should not pay more than is necessary for efficient service, and it should not bear the costs of any facilities or services from which it derives no benefit. Responsibility for payment for facilities or services which are shared (to their benefit) by other shippers should be apportioned according to the demand elasticities of the various shippers; thus, railroads would be given incentives to ensure that competitive traffic contributes as much as possible toward these costs. Finally, changes in coal rates should not be so precipitous as to cause severe economic dislocations.

In September, the Commission instituted a proceeding to obtain additional information on the Chicago, Central & Pacific Railroad Company (CCPR) petition for acquisition and operation of certain track of the Illinois Central Gulf Railroad Company, and the Commission denied CCPR's request for confidentiality. Rules were also adopted during the month to govern the handling of competitive access issues.

Through the work of its Office of Transportation Analysis, the Commission was quite active in its prepara-

tion of a number of legislatively mandated studies, and its performance of related monitoring operations.

Under Section 26 of the Bus Regulatory Reform Act of 1982, the Commission and the Department of Transportation were charged with conducting a study on intercity bus terminals and stations, and a *Bus Terminal Study* was submitted to Congress in December 1984. It focused on the question of how Greyhound Lines, Inc., and Trailways Incorporated's control of a large share of the nation's bus terminals would affect public access to an effective and competitive bus industry in a deregulated environment.

During the month of October 1984, the Commission revised its regulations governing the computation of "reasonably expected costs" used in connection with railroads' light-density-line surcharges. The Commission's 1923 decision allowing the Southern Pacific Company to merge with the Central Pacific Railway was reopened at the request of the Southern Pacific Transportation Company, which argued that the conditions imposed on the merger 61 years ago were now outdated and competitively destructive. The Commission also overturned an Administrative Law Judge's ruling and dismissed a rate reasonableness case against five railroads that were formerly thought to have market dominance over chemical shipments between points in Louisiana, West Virginia, and New York. In addition, the ICC assumed regulation of interstate rail activities in the states of Ohio and Idaho.

On October 11, the Commission issued a final rule requiring Class I railroads to submit a report from an independent public accountant stating that specified data supplied in "R-1" annual reports submitted to the ICC have been examined using agreed-upon procedures, and that the data have been found to be in compliance with the Uniform System of Accounts for Railroad Companies.

Economic analyses were also performed for the pending proceeding involving the proposed merger of the Southern Pacific and Santa Fe railroads, and competitive analyses of alternate proposals advanced in a proceeding concerning the acquisition of Milwaukee Road rail lines were prepared.

A nationwide *Household Goods Industry Transportation Survey* was conducted in response to a Congressional request to determine the impact of the Motor Carrier Act of 1980 and the Household Goods Transportation Act of 1980 on household goods carriers and individual shippers, and a report will soon be issued on the Commission's findings. The major provisions and intent of the Motor Carrier and Household Goods Transportation Acts have largely been achieved, and survey responses indicate that competition has increased, and carriers are employing innovative pricing methods and providing services more in line with those needed by shippers. Preliminary data also reveal that the financial condition of the nation's carriers does not appear to have been adversely affected by deregulatory legislation, although problems relating to the number of claims filed

shipper perception of service quality, the instance of estimates to household goods shipments being substantially below final charges, and the possibility of greater long-run industry concentration have been identified.

During fiscal year 1985, economic advice and analysis were also provided to the Commission concerning coal rate guidelines, intramodal rail competition, and rate increases implemented by a motor carrier rate bureau.

The past fiscal year also saw the Commission continue to reduce regu-

latory barriers to entry and exit from the trucking industry, thereby enhancing carrier competition and efficiency, while simultaneously striving to meet the needs and to protect the interests of the shipping public. Certain filings formerly required in the area of finance and rates were either eliminated or consolidated, the burden of proof for parties seeking or opposing grants of authority was more clearly defined, and the safety records of applicants were given new emphasis.

LEGISLATION

During fiscal year 1985, the Interstate Commerce Commission's legislative activities were focused once again on Congressional oversight of the implementation and effects of the Motor Carrier Act, the Household Goods Transportation Act, the Staggers Rail Act, the Bus Regulatory Reform Act, and the Motor Carrier Safety Act. In addition to testifying at Congressional hearings examining many of these matters, the Commission supplied written responses to pre-hearing and follow-up questions where more detailed information was requested by those members of Congressional committees overseeing the Commission's activities.

The Commission submitted one formal legislative proposal for Congressional consideration during fiscal year 1985. This proposal would have eliminated the requirement that the Commission prepare annually a report regarding food and grocery transportation. The Commission also closely followed actions taken on legislation which, if enacted, would have had an impact on those interstate transportation activities under its jurisdiction. As part of this process, the Commission commented on legislative measures as they were being developed and occasionally submitted draft language in response to Congressional requests.

Congressional interest in the rail area continued to be strong in fiscal year 1985. Numerous bills dealing with rail issues, including two major proposals, were introduced. As a result of this activity, the Commission was asked to conduct several briefings for Congressional staff members on major Commission proceedings

developed to implement provisions of the Staggers Rail Act. These briefings included oral presentations by Commission staff and the distribution of briefing papers which explained the proceedings in some detail. The House and Senate Judiciary Committees examined legislation designed to solve competitive access problems experienced by some shippers,¹ and the Commission participated in that process through the presentation of oral testimony on that subject and the submission of written comments on the legislation under consideration. In addition, at the close of the fiscal year, the Commission was preparing for a major oversight hearing scheduled for November 1, 1985, before the Senate Committee on Commerce, Science, and Transportation on ICC implementation of the Staggers Act.

The only major bill affecting the Commission's jurisdiction and functions which was acted on during the fiscal year was legislation concerning freight forwarder deregulation.² This legislation would remove the Commission's authority over the activities of surface freight forwarders. The Commission participated in Congressional hearings on this subject and was active in providing comments and proposed changes to the legislation. This legislation was reported by the Senate Commerce Committee in July 1985.

A more detailed description of the Commission's activities before Con-

¹ S. 447 and H.R. 1140, both entitled the Railroad Antimonopoly Act of 1985.

² S. 1124, the Surface Freight Forwarder Deregulation Act of 1985.

gress during fiscal year 1985 is provided in the following sections.

Legislative Recommendations

During fiscal year 1985, Congress considered legislation to eliminate a number of reports to Congress which were required by statute but which were deemed to be no longer necessary.³ As part of this process, the Commission submitted to Congress a proposal that the requirement contained in Section 8 of the Motor Carrier Act of 1980 (49 U.S.C. 10732) regarding the submission of an annual report on food and grocery transportation be eliminated. Section 8 authorizes food and grocery sellers which usually deliver the goods to customers to reduce the price of those goods by the actual amount of the transportation costs if the customer picks up the goods. This section requires the Commission to report to Congress annually on the extent to which savings resulting from the provision are being passed on to the consumer. The Commission requested that this reporting requirement be eliminated since the report no longer serves a useful purpose and the cost and time in preparing it outweigh any benefit to the public. The legislation and the Commission's proposal were still under consideration by the appropriate Congressional committees at the end of fiscal year 1985.

Railroads

Competitive Access—During the past fiscal year, both the House and Senate Judiciary Committees gave

serious consideration to bills which were designed to foster competition in the rail industry, to modify the existing treatment of captive shippers by placing the rail industry within the scope of the antitrust laws (S. 447 and H.R. 1140), and to provide for other modifications. Although the Commission did not testify before these Committees during the fiscal year, comments on the bills were submitted three times for inclusion in the official hearing records. Also, the Commission was scheduled to appear as a witness before the House Judiciary Committee in October 1985.

On April 23, 1985, the Commission submitted a statement to the Senate Judiciary Committee on the provisions of S. 447, as well as the administrative solutions that the Commission was considering with regard to the competitive access problems experienced by some shippers. Similar comments were submitted to the House Judiciary Committee on July 31, 1985, in connection with that Committee's consideration of H.R. 1140, which is substantially the same as S. 447.

In its comments, the Commission began by outlining the provisions of the proposed legislation. In essence, the proposals attempt to restrain rail rates for captive shippers by requiring a rail carrier to allow trackage rights over its lines to another carrier in order to permit that carrier access to shippers. If the owner carrier denies use of its facilities on "reasonable" terms to such a shipper or another rail carrier, the owner carrier would be in violation of the Sherman

³ S. 982 and H.R. 2618, the "Congressional Budgeting Reform Act of 1985."



Act, and would also be limited in the rates it could charge.

The Commission stated its view that the Staggers Act and its implementation have been successful in removing unnecessary regulation, encouraging efficient carriers to earn adequate revenues, and in balancing the interests of the parties. However, the Commission acknowledged that certain changes in railroad policy and operations have been unpopular. With regard to reciprocal switching, one method of alternative access, the Staggers Act prompted rail carriers to review existing arrangements and to limit some of these arrangements to reflect existing competitive conditions, revenue need, and more efficient routings. Under current law (49 U.S.C. 11103), the Commission may authorize reciprocal switching arrangements in terminal areas. However, these legislative proposals would go further, and would have the effect of requiring trackage rights on any part of a carrier's system.

The Commission's statement outlined a number of practical problems with the provisions of these bills. The Commission expressed concern that the bills do not reflect the basic economic policies of the Staggers Act and the balance that was intended in that Act. Moreover, by making carriers liable for treble damages, the bills would make carriers very reluctant to pursue efficient policies if there is any opposition and would create incentives for shippers to use the courts to litigate even marginal problems that might otherwise be settled amicably. Also, the bill would not allow consideration of competitive circumstances in deter-

mining the price for track rental or the rates to be charged if no bona fide competition results from reasonable charges for trackage rights. Instead, the legislation would establish an artificial rate standard bearing no relation either to the individual movement or to the carrier's overall revenue need.

The Commission then called to the Committee's attention the Commission's institution of a proceeding in which the ICC announced its intention to adopt rules to govern its handling of various competitive access issues, such as joint rates and through routes, reciprocal switching, and terminal trackage rights.⁴ This proceeding was instituted to seek comments on competitive access rules which were developed through negotiations between the National Industrial Transportation League and the Association of American Railroads, and a separate proposal submitted by Railroads Against Monopoly. The Commission stated its view that the proceeding would be a more appropriate vehicle for the establishment of competitive access standards than the legislatively crafted solution in S. 447 and H.R. 1140, particularly in view of the fact that the Commission believes that these bills leave unresolved a number of serious legal and practical problems. A copy of the notice instituting the proceeding was sent to the Committees as an attachment to the comments.

Hearings on these proposals continued in both the House and Senate.

⁴ Ex Parte No. 445, Sub No. 1, Interstate Rail Commission, Notice served March 28, 1985.

through the summer and fall of 1985. On September 23, 1985, the Commission sent a letter to the Senate Judiciary Committee providing information to supplement the Commission's previous comments. That letter reiterated the Commission's position in general opposition to the legislation, based on practical problems it could create as well as its failure to reflect the basic economic policies of the Staggers Act and the balance that was intended by the Act. The letter went on to explain that the Commission had recently voted in an open conference on the various issues raised in Ex Parte No. 445 (Sub-No. 1). Since a written decision had not yet been published, the letter provided a brief summary of the rules which the Commission adopted. In addition, the Commission also mentioned another rulemaking proceeding that it believed might help accomplish some of the goals of S. 447 by making it easier for a shipper to show that it is captive.¹ Since this proceeding had also been decided in open conference but no written decision was yet available, the letter summarized the rules which had been adopted. The Commission promised to supply copies of the final decisions to the Committee when they were published.

At the close of the past fiscal year, neither S. 447 nor H.R. 1140 had been acted upon by the Committees. However, hearings were continuing, and the Commission was scheduled to testify before the House Judiciary Committee on October 10, 1985.

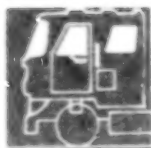
¹ Ex Parte No. 445 (Sub-No. 1), *Shippers' and Carriers' Complaints*, 10 ICC 2d 100 (April 9, 1985).

Trucking Companies

Motor Carrier Oversight.—On September 9, 1985, the Commission testified before the Senate Committee on Commerce, Science, and Transportation at its fifth annual oversight hearing on the implementation and effects of the Motor Carrier Act. In addition to a prepared statement, the Commission provided a list which gave additional information on Commission proceedings, the latest earnings and traffic volume data for the nation's largest motor carriers of property, and a list of studies concerning the impact of motor carrier deregulation on small communities.

The Commission began by reaffirming its previous testimony that the motor carrier industry and the users of its services have responded favorably to changes mandated by the Motor Carrier Act, and by expressing strong support for further deregulation. After listing some statistical highlights for motor carrier activities since the Commission's previous testimony, the statement discussed significant events or Commission actions in a number of important areas.

The Commission reported that the trend toward an increased number of contract carrier applications was continuing, particularly with regard to the percentage of applications filed by first-time applicants. Based on available data, the Commission stated that service quality had improved since passage of the Act, as evidenced by the continuing decline in the number of complaints dealing with service problems received by the ICC. Complaints by owner-operators had also declined, with



delays in settlement remaining the major complaint that owner-operators were bringing to the Commission. As for service to small communities, research results have consistently indicated that overall motor carrier service to these communities was at least as good as service levels experienced prior to enactment of the Motor Carrier Act.

The Commission reported a dramatic increase in the number of tariff filings during the past fiscal year. This increase was attributed primarily to increased pricing flexibility authorized by the Commission in its decision reducing the notice periods for independently filed rates.¹ Shortened notice periods have allowed motor carriers and freight forwarders to react more promptly and more often to constantly shifting economic and competitive situations.

The Commission discussed several decisions which would have the effect of facilitating intermodalism, thereby increasing the service options available to the shipping public. The continuing evolution toward multimodal transportation companies is one example of the greater efficiencies that reduced regulation makes possible.

In reporting on the financial condition of the motor carrier industry, the Commission stated that the latest data published by its Bureau of Accounts showed that large trucking companies reported increased revenues but declines in earnings for the first quarter of 1985 and the twelve months ending March 31, 1985, com-

pared to the same periods of 1984. The Commission's statement also presented data from the U.S. Department of Labor's Bureau of Labor Statistics which showed that the rate of trucking industry employment was as favorable or better than that of manufacturing during each year from 1978 through 1982. Since then, the rate of unemployment in the trucking industry has been higher than in the manufacturing sector. Price competition and discounting which have occurred since the passage of the Motor Carrier Act have made wages a critical factor in the financial performance of trucking companies. The Commission reported that most of the more than 14,000 new motor carriers operating under the Act are non-union carriers.

The Commission also described several proceedings which affect owner-operators. For example, the Commission modified its lease and interchange rules to authorize the use of a master lease in connection with trip-lease operations and to permit carriers to issue an initiating receipt other than in person.² These new rules will serve the useful public purpose of allowing greater efficiency in both the private and for-hire sectors of the transportation industry. In another decision concerning leasing regulations, the Commission eliminated the 30-day minimum period required of a lease of equipment between owner-operators and authorized carriers.³

¹ Ex Parte No. MC 274, 1984, 1985, 1986, 1987, and 1988 (regarding independent Motor Carrier Tariff Filings) (1984).

² Ex Parte No. 18, 1984, No. 19, 1984, No. 20, 1984, No. 21, 1984, No. 22, 1984, No. 23, 1984, No. 24, 1984, No. 25, 1984, No. 26, 1984, No. 27, 1984, No. 28, 1984, No. 29, 1984, No. 30, 1984, No. 31, 1984, No. 32, 1984, No. 33, 1984, No. 34, 1984, No. 35, 1984, No. 36, 1984, No. 37, 1984, No. 38, 1984, No. 39, 1984, No. 40, 1984, No. 41, 1984, No. 42, 1984, No. 43, 1984, No. 44, 1984, No. 45, 1984, No. 46, 1984, No. 47, 1984, No. 48, 1984, No. 49, 1984, No. 50, 1984, No. 51, 1984, No. 52, 1984, No. 53, 1984, No. 54, 1984, No. 55, 1984, No. 56, 1984, No. 57, 1984, No. 58, 1984, No. 59, 1984, No. 60, 1984, No. 61, 1984, No. 62, 1984, No. 63, 1984, No. 64, 1984, No. 65, 1984, No. 66, 1984, No. 67, 1984, No. 68, 1984, No. 69, 1984, No. 70, 1984, No. 71, 1984, No. 72, 1984, No. 73, 1984, No. 74, 1984, No. 75, 1984, No. 76, 1984, No. 77, 1984, No. 78, 1984, No. 79, 1984, No. 80, 1984, No. 81, 1984, No. 82, 1984, No. 83, 1984, No. 84, 1984, No. 85, 1984, No. 86, 1984, No. 87, 1984, No. 88, 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With regard to enforcement, the Commission stated that approximately 85 percent of the fiscal year 1985 enforcement caseload related to the high-emphasis enforcement categories outlined in the Enforcement Policy Statement that the Commission adopted in July 1984. The most prevalent type of case involved the lack of insurance by motor carriers. The Commission pointed to the increased minimum level of insurance coverage that carriers must maintain and the precipitous insurance premium increases that many carriers were facing as among the principal causes for this increase in the number of insurance enforcement cases. The Commission also noted that, during the six months prior to the hearing, it had received numerous calls from new and existing motor carriers who were encountering difficulties in obtaining necessary insurance coverage. This situation appeared to be escalating and was reflected in the dramatic increase in the number of Commission insurance cancellation warning letters and consent agreements issued during fiscal year 1985. The Commission stated that it had asked the Office of Compliance and Consumer Assistance to continue to determine why these increases had occurred and to explore remedies to alleviate the insurance problem confronting the motor carrier industry.

Economic Deregulation.—On September 27, 1985, the Commission testified before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on economic deregulation of the trucking industry.

The Commission's statement emphasized the favorable results of the Motor Carrier Act which had been reported to the Committee at the prior hearing, and stated that experience in implementing the Act had led the Commission to conclude that further motor carrier deregulation is warranted.

The Commission began by summarizing its previous testimony on the effects of the Act. The Commission reported that an unprecedented number of carriers have taken advantage of the eased-entry provisions, and that shippers have more price options available to them as a result of the pricing flexibility afforded to motor carriers. Negotiated rates and discount provisions are becoming commonplace, and there is much less reliance on rate bureau processes and publications. The Commission also stated that there has been a decrease in the number of service-related complaints.

While the reforms of the Motor Carrier Act were an excellent beginning, the Commission testified that continued entry, rate, and finance regulations no longer appear to serve any useful function. Therefore, the Commission expressed its conviction that the motor carrier industry and the shipping public will benefit from further legislative deregulation.

The Commission's statement focused on two proposals before Congress to accomplish this goal: H.R. 3222, introduced by Congressman Moody on August 1, 1985, and a Department of Transportation (DOT) bill transmitted by the Secretary to



Congress on September 12, 1985.⁹ H.R. 3222 would retain economic regulation of interstate motor carriers of passengers and household goods. A new category of "national carriers" would be created, consisting of carriers serving three or more contiguous states, and these carriers would be able to operate free from federal and state regulation. The DOT bill would also eliminate economic regulation of motor carriers, but it goes further than H.R. 3222 by deregulating household goods carriers, with the exception of the area of consumer protection, which would be transferred to the Federal Trade Commission. As in H.R. 3222, safety and insurance provisions would be administered by the DOT. The Commission noted that both proposals have the same worthwhile goal of removing burdensome motor carrier economic regulation, and that both would produce an improvement over current regulation. While the testimony praised several aspects of H.R. 3222 in the area of safety, preemption, and standardization, the Commission stated its belief that H.R. 3222 does not go far enough in further deregulating the trucking industry. The Commission preferred DOT's proposed legislation as a more straightforward proposal that would provide more orderly and extensive deregulation.

The Commission addressed the question of state preemption by describing the differing approaches to this question taken by the two proposals. Section 61 of the DOT bill

would prohibit states and other political agencies from enacting or enforcing any regulation concerning interstate rates, routes or services, once the federal government ceases its regulatory role. Section 19 of H.R. 3222 goes much further in preempting national carriers from both federal and state regulation of rates, routes, and services. The Commission noted that in recent legislation concerning the bus and rail industries, Congress had resolved the issue of the states' regulatory role largely in favor of federal preemption of state powers, and endorsed this approach as a wise choice. While the states should be permitted to exercise police powers in addressing problems which are uniquely their own, the Commission stated that they should not be permitted to frustrate federal policies.

Concerning the issue of safety, the Commission testified that H.R. 3222 and the DOT proposal both offered improvements. The Commission particularly endorsed the provision to place responsibility for safety in one federal agency as a sensible concept that would improve safety enforcement.

Finally, the Commission stated its view that the past five years have provided a sufficient transition period for the industry to adjust to a deregulated environment. Since the regulation which remains is largely meaningless and ineffective, the Commission endorsed its elimination without delay.

Safety Fitness—The Commission's activities in the area of safety fitness determinations were examined by the Government Activities and Transport-

⁹S. 1110 introduced by Senator Danforth, at request, on September 26, 1985.

tation Subcommittee of the House Committee on Government Operations at a hearing on September 12, 1985. The Commission presented testimony which discussed the current procedures for determining the safety fitness of applicants for operating authority and the steps the Commission was taking to implement the safety fitness provisions of the Motor Carrier Safety Act of 1984.

The Commission's statement began by describing the coordinated activities of the Commission and the Bureau of Motor Carrier Safety (BMCS) at the DOT in connection with the sharing of safety information, and DOT participation in safety-related fitness and revocation proceedings before the Commission. The Commission also explained its procedures for making safety fitness determinations in cases involving applications for authority.

The Commission's testimony noted that under section 215 of the Motor Carrier Safety Act, the DOT, in cooperation with the Commission, is required to establish a procedure for determining the safety fitness of owners and operators of commercial motor vehicles. Once this procedure has been finalized, if an applicant for motor carrier operating authority does not meet the new safety fitness requirements, the Commission must find the applicant unfit and deny the application. The Commission also outlined in its statement the steps which it has taken to implement these provisions. Members of the Commission's staff have participated in a series of meetings with staff from the BMCS concerning safety fitness certification procedures and

interagency coordination of revised standards. The Commission also reported that the Motor Section of its Office of Proceedings had submitted informal comments to a draft notice of proposed rulemaking implementing the safety-fitness rating provisions of Section 215. In addition, the Office of Proceedings had conducted a thorough evaluation of Commission licensing and fitness regulations to identify those rules and practices that must be revised to conform with the new safety certification procedures. The Commission stated that actual revision of its regulations and practices will follow the DOT's implementation of final rules in this area.

The Subcommittee had expressed concern regarding the role of unverified affidavits in safety-fitness determinations and in appeals of adverse safety-fitness findings by the Commission under the new procedures required by the Act. The Commission reported that its preliminary implementation discussions with the BMCS, as well as its advance review of the safety regulations being formulated by DOT, confirmed that pre-licensing safety certification and successful appeals of adverse safety-fitness findings would require confirmation assurances from BMCS of safety-fitness information and could not be premised on an applicant's assertion alone.

The Commission's testimony stated that its safety fitness responsibilities do not necessarily end with the granting of a certificate to operate as a motor carrier and noted that a continuing safety monitoring system is presently in place under the 1982 Memorandum of Understanding and



Agreement between the Commission and the DOT. This Memorandum provides procedures under which the BMCS may petition the Commission to revoke or suspend the operating authority of a carrier determined to have violated a safety-compliance order. The Commission stated that the enhanced safety monitoring conducted under the safety-fitness standards mandated by the Act would permit the Commission to continue to rely principally upon the BMCS to petition for revocation of the authorities of non-compliant carriers. However, the Commission indicated that it would consider instituting revocation proceedings on its own motion if it were alerted to a carrier's unacceptable safety record by other means, and if this information were verified by BMCS.

The Commission closed its testimony by reiterating its concern over the safety of motor carriers that operate on the nation's highways, and committing itself to doing all that it could to ensure that carriers operating under Commission authority continue to provide transportation that is safe and economical.

Other Issues

Freight Forwarders—On May 17, 1985, the Commission participated in the consideration of legislation to deregulate surface freight forwarders by testifying before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on the provisions of S. 1124, the "Surface Freight Forwarder Deregulation Act of 1985."

The Commission began its testimony by stating its belief that S. 1124 would accomplish the intended result of removing Commission jurisdiction over activities of the surface freight forwarding industry, and stated that existing statutory provisions are outdated and constitute cumbersome impediments to the promotion of efficient and competitive freight forwarder service.

The Commission's statement outlined a number of administrative actions that it had taken to reduce the burdens faced by surface freight forwarders in competing with other carrier modes since passage of the Motor Carrier Act. For example, the Commission noted that it had continued to opt for increased competition in the marketplace in granting broad grants of general commodity authority to surface freight forwarders. The ICC also described a recent action allowing the Freight Forwarders Tariff Bureau to publish a rule that would provide for the averaging of rates without specifically publishing the actual applicable rates in the tariff.¹⁰

Despite these actions, the Commission reported that existing regulations required by the statute have prevented the Commission from adopting a regulatory approach that would enhance, to the maximum extent possible, competition and efficiency within the surface forwarding industry. The Commission stated that S. 1124 should help to achieve more competitive pricing and increase service options available to shippers. In addition to removing the Commis-

¹⁰For 1985/86, Freight Forwarders Tariff Bureau, "Average Rules," Bureau of Motor Carrier Tariffs, 1985.

sion's general jurisdiction over freight forwarders, the legislation would ensure that: (1) no controls are placed on freight forwarder rates; (2) freight forwarders are not immune from anti-trust provisions; (3) freight forwarders are not limited in their operations to the use of certain types of carriers; and (4) freight forwarders are not precluded from owning other

modes of transportation. The Commission expressed its support for these goals and for the proposed legislation.

The Senate Commerce Committee filed its report on S. 1124 on July 31, 1985.¹¹ At the close of the fiscal year, it was awaiting consideration by the full Senate.¹²

¹¹ S. Rept. 98-120.

¹² S. 1124 was passed by the Senate by a cloture vote on November 4, 1985.

ADMINISTRATION

Organization and Management

The Commission spent considerable time during fiscal year 1985 in the consideration of a number of organizational proposals designed to consolidate similar functions or to reduce operating overhead. Proposals affecting the Commission's Office of Compliance and Consumer Assistance, Bureau of Accounts, Office of the Special Counsel, and satellite offices of the Office of the Chairman were considered by the Commission at an open conference held on June 18, 1985.

Last fiscal year, the Commission voted to make extensive changes in the field structure of the Office of Compliance and Consumer Assistance (OCCA). That office had experienced a decrease in work requirements consistent with the Commission's reduced regulatory role as a result of legislative and policy reforms implemented since 1980. The OCCA's regional and field offices are being reduced from the present level of 6 regional and 49 field offices to 3 regional and 19 field offices. This action will streamline the OCCA to match the Commission's decreased level of regulatory activity, and will position it for further restructuring should Congress decide to eliminate interstate motor freight regulation.

The Commission also approved in fiscal year 1985 a plan to restructure its Bureau of Accounts. The number of operating sections in the Bureau is being reduced from five to three, thereby lowering overhead and saving staffs with similar professional disciplines and technical backgrounds. This move will result in improved flexibility and greater operational efficiency.

The Commission also voted to establish an Office of Public Assistance to consolidate functions performed by the Small Business Assistance Office and the Office of the Special Counsel into one organization that will assist the public in its dealings with Commission regulatory processes, and that will develop and maintain cooperative relations with state and local governments. This merger will enable Commission staff to serve the public interest more effectively.

The Commission also agreed to merge two of the Chairman's satellite offices—the Office of Public Affairs and the Office of Legislation and Governmental Affairs—into a new Office of Legislative and Public Affairs.

Plans to implement these restructurings are being developed and should become effective by the beginning of fiscal year 1987.

In addition to these changes, two administrative realignments were implemented during the past fiscal year. The Commission consolidated its Suspension Board and Special Permission Board within the Bureau of Traffic and eliminated the Ombudsman's Office in its Office of Proceedings.

Because of several constraints imposed on the Commission's fiscal year 1985 budget, a great deal of time and effort was devoted by Commission staff to the management of essential operations within available funding limitations. A Commission-wide hiring freeze, spending restrictions on nonpersonnel items, Commission-wide furloughs, and the diversion of staff in some cases to areas of higher work priority caused

the deferral of many normal activities. Processing backlogs developed in the handling of Commission proceedings, and compliance and enforcement activities had to be concentrated in those areas closest to regional and field offices to minimize travel expenditures. Congressional approval of a supplemental appropriation late in the fiscal year permitted a return to more normal operations, but the completion of some of the Commission's deferred work will extend into fiscal year 1986.

Through a reprogramming of resources, the Commission's printing, reproduction, and photocomposition was assigned to the Office of the Secretary during fiscal year 1985, and the Office improved this operation so that services became more efficient and cost effective. One major improvement was the implementation of a direct-deal printing contract through the Government Printing Office which allows contract printing work to be completed more quickly. The Commission is the first federal agency to use such a contract. Other cost reduction initiatives implemented last fiscal year included changes in publication formats, elimination of certain publications, and publication and sale of ICC publications, such as the *ICC Register*, through the U.S. Government Printing Office. In addition, the formerly separate ICC and MCC printed-decision series were combined into one.

In the mail management and process serving areas, the maintenance of handwritten log books and the duplicative recording documents were eliminated through modification of the Commission's case-tracking

computer system to include a program to record all registered, certified, and other accountable mail delivered by courier. Other cost savings were achieved by the elimination of the in-house maintenance of telex and facsimile equipment.

During fiscal year 1985, the Commission collected more than \$4 million under its revised fee schedule adopted in Ex Parte No. 246 (Sub-No. 2), *Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services*. This schedule included new fee items which significantly increased fee collection activities in the Office of the Secretary. A monthly billing system for tariff-filings, contracts, special permission applications, designation-of-agent filings, special dockets, informal opinions, and informal complaints was also developed to facilitate fee collections. The Commission additionally issued the first annual update of its user-fee schedule in Ex Parte No. 246 (Sub-No. 3), *Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services*, which enables the Commission to recover its current costs for providing services to the public.

In response to new regulations issued in Ex Parte No. 55 (Sub-No. 62), *Applications For Certificates of Registration For Certain Foreign Carriers*, new docketing procedures were developed to accept applications for foreign carrier certificates of registration. New procedures, including a new insurance certificate, were developed to accept proof of insurance from foreign carriers.

Significant improvements were made in the Commission's reference service operation last fiscal year as a result of the centralization of those functions in the Commission's Library.

The Commission-wide employee furlough implemented from April through June 1985 had considerable impact on various operations in the Office of the Secretary. The hardest hit areas were the Applications Unit, which had a backlog of over 800 applications at the height of the furloughs, and the Insurance Unit, which had a backlog of several thousand certificates and cancellation notices. The furloughs caused significant increases in the length of time involved in the issuance of decisions rendered by Commission divisions and by the entire Commission. The public also experienced significant delays in obtaining certificates, copies of Commission decisions, and records as a result of the employee furlough.

While the Secretary's staff made diligent efforts to eliminate work backlogs when they returned to full-time employment in June 1985, the processing backlogs generated by the furlough were so great that it became necessary not only for employees from other Commission offices to be detailed to assist the Office of the Secretary, but also for the Office to resort to overtime work. Such actions enabled the Commission to return to its normal processing operations by September 1985.

Human Relations

During fiscal year 1985, the Commission issued a revised Equal Em-

ployment Opportunity/Affirmative Action program guide after several months of extensive review by Commission managers, supervisors, and staff. Entitled *ICC Administrative Issuance No. 8-710*, the new guide revises the Commission's former program guide to reflect all major federal civil rights and Equal Employment Opportunity (EEO) statutes and procedures.

The Commission voted on July 30, 1985, to change the name of the EEO Office to the Office of Human Relations to reflect the Office's newly combined mission of continued emphasis on the ICC's successful Upward Mobility Training Program and the provision of human relations training for managers and supervisors. As part of this endeavor, increased staff concentration was devoted to the placement and advancement of handicapped employees and the opening of opportunities for minorities and women, and to community outreach activities.

Commission Budget

Two budget submissions were developed and submitted concurrently to Congress and the Office of Management and Budget during the past fiscal year. On October 25, 1984, the Commission unanimously voted to request a supplemental appropriation of \$4 463 million for fiscal year 1985. The major portion of this request was needed to finance program operations and staff-years at levels approved in a Conference Report related to the fiscal year 1985 Continuing Resolution, P.L. 98-473. The balance was required to fund an additional 35 full-time staff-years re-

quired by the Commission to carry out its statutory responsibilities. The Commission also sought an additional \$1 million in supplemental funding to cover the cost of the January 1985 government-wide pay increase.

Forwarded to Congress in September 1985, the Commission's fiscal year 1987 budget request reflects a reduction in staff attributable primarily to increased efficiencies to be gained from reorganization actions voted upon by the Commission and slated for implementation by fiscal year 1987. The ICC's reduced regulatory role in motor carrier and railroad matters continues to result in budget decreases.

Fiscal year 1985 Appropriations

Commission funding for fiscal year 1985 was included as part of a resolution (Public Law 98-473, approved October 12, 1984) authorizing the following continuing appropriations:

- *Salaries and Expenses:* For necessary expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed \$1,500 for official reception and representation expenses, \$48,000,000, provided that joint board members and cooperating state commissioners may use government transportation requests when traveling in connection with their official duties as such.

On August 15, 1985, Public Law 99-98, Supplemental Appropriations Act, 1985, appropriated an additional amount of \$2,100,000 for salaries and expenses provided that none of the funds provided in the Act or in Public Law 98-473 were to be avail-

able for more than six full-time equivalent staff years, including Commissioners, in each Commissioner's office, except for the Chairman. An additional \$1,000,000 was appropriated to cover the cost of the fiscal year 1985 pay increase.

- *Direct Rail Service:* None of the funds provided under the Supplemental Appropriations Act were to be available for the execution of programs the obligations for which could reasonably be expected to exceed \$1,000,000 for directed rail service authorized under 49 U.S.C. 11125 or any other legislation.

Salary and Expenses Appropriation

On March 7, 1985, Commission Chairman Reese H. Taylor, Jr., Vice-Chairman Heather J. Gradison, Commissioners Paul H. Lamboley and Andrew J. Strenio, Jr., and staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the Commission's supplemental appropriation requests for fiscal year 1985 and the fiscal year 1986 budget request. The Chairman, Vice-Chairman, and all attending Commissioners provided testimony supporting both requests to the Subcommittee on Transportation of the Senate Committee on Appropriations on March 28, 1985. The fiscal year 1985 supplemental appropriation was enacted August 15, 1985.

Payments for Directed Rail Service Appropriation

Between October 5, 1979, and March 23, 1980, the Kansas City Terminal Railway Company provided

rail service, as directed by the Commission, over the lines of the bankrupt Chicago, Rock Island and Pacific Railroad. Funding for claims

associated with this service and the accounting operations remains in abeyance pending final resolution of outstanding claims.

ENERGY AND ENVIRONMENT

Virtually all of the work done by the Commission's Section of Energy and Environment consists of environmental documentation prepared in response to the National Environmental Policy Act's (NEPA) directive that federal agencies assess the environmental consequences of any action which they propose. The bulk of this documentation is comprised of environmental assessments and environmental impact statements that analyze the effects of railroad construction, consolidation, and abandonment proposals for which ICC authorization is required.

The NEPA process was refined by the Commission's environmental unit relative to decisions it made concerning various railroad activities during the past fiscal year.¹ Recent refinements in the ICC's case-processing procedures, coupled with heightened public awareness of and concern for the quality of the human environment, have served to expand public participation in the Commission's environmental decision-making processes. This, in turn, has led to decisions which reflect an appropriate and balanced accommodation of both environmental and economic concerns. Equally significant is the fact that recent improvements to the Commission's application of the NEPA process to its decision making have been achieved without additional administrative delays.

¹ NEPA process, as referred to here, is an all-embracing term that contemplates compliance with the National Energy Act, the National Historic Preservation Act, the Coastal Zone Management Act, the Endangered Species Act, and dozens of other statutes, all of which are designed to protect and enhance the quality of the human environment.

Experience with two rules adopted in 1984 demonstrates that participation in the Commission's environmental process has indeed expanded. Under the provisions of one rule,² a clearinghouse system was established for the dissemination of environmental notices to individual state agencies and other interested parties. Each state now has a designated administrator who receives railroad notices of contemplated actions which could potentially affect the environment. The designated administrator is responsible for disseminating the notices to other state agencies with pertinent jurisdiction.

This rule was based on the Commission's assumption that each state knows best its own system of administration and is best able to respond effectively and efficiently to situations in which it has an interest. This assumption has been confirmed in practice, as state-agency participation in the ICC's environmental processes has increased dramatically during fiscal year 1985, especially in the area of coastal zone management, land-use planning, noise abatement, and grade-crossing safety.

Another area in which public participation has increased substantially is that relating to public-use considerations in railroad abandonment proceedings. Increased participation in this area may be largely attributed to a 1984 Commission decision establishing a four-part showing which must be made by any party requesting the imposition of a public-use

² Ex. Part No. 274, Sub. N, 100 Environmental Notices in Abandonment and Rel. Exemption Proceedings (last printed, revised September 23, 1984).

condition.³ In the past year, this requirement, which has also served to expedite consideration of public-use considerations in general, has been responsible for the participation by more people in more proceedings than in any previous year.

Railroads have contributed significantly to this nation's historical heritage and, under the law, the Commission must safeguard this legacy to the maximum extent possible. Accordingly, any rail abandonments or similar railroad activities that could adversely affect rail structures deemed historically important must be undertaken only after the ICC has complied with provisions of the National Historic Preservation Act (NHPA) and attendant implementing rules.

Full compliance with these provisions is a difficult and time-consuming task, however, and one not easily reconciled with the Commission's mandate for the expeditious handling of regulatory decisions. Therefore, in an effort to accommodate the policy objective of both the Interstate Commerce Act, the ICC's

basic charter, and the NHPA, the Commission has proposed entrance into a programmatic memorandum of agreement in cooperation with the Advisory Council on Historic Preservation. Applicable to rail abandonment proceedings, this proposal has been tailored to satisfy the requirements of the NHPA without unreasonably delaying the abandonment process. Although the agreement has yet to be formally adopted, the Commission has proceeded unilaterally in accordance with its terms in the consideration of relevant rail cases.

Other procedural revisions to facilitate public participation in the Commission's NEPA process without unreasonably delaying proceedings are currently under consideration. For example, the Commission is actively considering final action on procedures to implement 1983 amendments to Section 8 of the National Trails System Act which would permit qualified interim use of abandoned railroad rights-of-way for trails.⁴ Action on this and other matters is expected during fiscal year 1986.

³Ex Parte No. 274 (Sub No. 12), *Rail Abandonment: Public Use Conditions* (not printed), served April 17, 1984.

⁴Proposed rules were set out in Ex Parte No. 274 (Sub No. 13), *Rail Abandonments: Use of Rights-of-Way as Trails*, served February 20, 1985.



RAILROADS

General Financial Condition

Because of a slowdown in industrial production and a concomitant reduction in railroad general merchandise traffic, revenue carloadings of Class I line-haul railroads fell 3.5 percent during the nine months ending June 30, 1985, compared to the similar period ending in June 1984.

Manufacturers' discounts and interest rate reductions sparked consumer demand for new automobiles which enabled the railroad industry's carloadings of motor vehicles to rise about 4 percent during the nine months ending June 30, 1985, compared to that same period in 1984. However, the otherwise sluggish economy caused declines in most other rail traffic. Carloadings of lumber and wood products used in the housing industry decreased 7.1 percent. Carloadings of coal, the railroad industry's largest revenue producing commodity, fell 2.3 percent in comparison with the same period of 1984, when coal traffic was abnormally high due to stockpiling by public utilities in anticipation of a nationwide coal strike on October 1, 1984, which did not materialize. In addition, abundant worldwide grain harvests and the strong United States dollar caused the demand for U.S. export grain to fall sharply during the nine months ending June 30, 1985, thus contributing to the 13 percent decline in railroad grain carloadings.

Commission data for Class I line-haul railroads for the 12 months ending June 30, 1985, and June 30, 1984, indicate that revenues decreased almost one-half of 1 percent to \$28.3 billion, and that revenue

per-ton-miles of freight increased about one-half of 1 percent. Net railway operating income decreased 8.4 percent to \$2.2 billion, and net income before extraordinary items declined 9.9 percent to \$2.3 billion. The rate of return on net investment in transportation property for Class I line-haul railroads declined to 5 percent from 5.72 percent.

The railroad industry continued to achieve productivity gains as well as cost savings through reductions in personnel. Total Class I line-haul railroad employment for the first eight months of 1985 declined 5.7 percent to a monthly average of 306,195 employees, compared to a monthly average of 324,725 employees during the same period of 1984. Maintenance-of-way and structures employees and maintenance-of-equipment employees declined by 3.7 percent and 8 percent, respectively.

Railroads have been granted a number of freedoms under the Staggers Rail Act of 1980 which have helped to produce a favorable long-term outlook for the railroad industry. Shippers have successfully utilized contracts to reduce shipping charges below published tariff rates and to facilitate more efficient handling and storage practices, thus lowering costs to consumers. To counter the potential decline in earnings brought about by rate reductions, the railroad industry continues its efforts to streamline operations through the aforementioned reduction of personnel and through the sale or abandonment of low-density lines. In some instances, private investors and non-transportation corporate entities are purchasing the abandoned properties.

and are forming new short-line railroad companies. Communities and businesses once threatened with the loss of railroad transportation services are now being served by these new, smaller railroad companies.

The current, generally stable economic conditions and the streamlining actions that large Class I line-haul railroads have been taking represent favorable steps that should serve to strengthen the railroad industry's future financial condition.

Reorganizations

During fiscal year 1984, a plan proposed by the Soo Line Railroad Company (Soo) to reorganize and acquire the railroad assets of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) was approved in a Commission proceeding and certified to Milwaukee's Reorganization Court.¹ At the same time, the Commission returned to the Court without action an acquisition and reorganization proposal of the Chicago and Northwestern Transportation Company (CNW).

In fiscal year 1985, CNW filed a revised proposal that the Court referred to the ICC for approval, and the court also requested that the revised CNW proposal be compared to the Soo proposal. The Commission found the revised CNW proposal to be consistent with the public interest and relevant statutes but it nevertheless determined that the Soo proposal was preferable.² The Court

approved the Soo proposal. Milwaukee's railroad assets were acquired by Soo on February 19, 1985, and those assets are now being operated as a subsidiary called "The Milwaukee Road Inc." As a result of the transfer of its rail assets, Milwaukee is no longer a railroad in reorganization subject to Commission jurisdiction.

Under Section 77 of the Bankruptcy Act, the Commission retains jurisdiction over three other railroad reorganizations, involving the Boston and Maine Corporation, the Morristown and Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company. While these reorganizations are essentially complete, several petitions were filed during the fiscal year by Trustees and counsel to set maximum limits of their compensation under the Bankruptcy Act.

Mergers and Consolidations

In fiscal year 1985 the Commission approved the consolidation of Norfolk Southern Corporation (NS), a large railroad holding company, and North American Van Lines (NAVL), a diversified transportation company whose principal business is motor common and contract carriage of household goods and general freight.³ This was the first major rail/motor consolidation considered by the Commission since it abolished the doctrine under which the operations of motor carriers acquired by railroads were re-

¹ Finance Docket No. 28640 (Sub-No. 9) et al. Milwaukee Reorganization—Acquisition by Grand Trunk Corporation. ICC 2d (served September 26, 1984).

² Finance Docket No. 28640 (Sub-No. 9) et al. Milwaukee Reorganization—Acquisition by Grand Trunk Corporation. ICC 2d (served January 11,

1985). The case was decided at a public voting conference held on December 20, 1984.

³ Norfolk Southern Corporation—Control: North American Van Lines, Inc. ICC 2d (1985). The case was decided at a public voting conference held on April 16, 1985.



stricted to auxiliary rail service, absent a showing of special circumstances warranting unrestricted operations.

The Commission found that (1) the NS/NAVL transactions would not result in a substantial lessening of competition; (2) likely public benefits, such as increased efficiencies and price and service options would result from an integrated intermodal system; and (3) intermodalism is encouraged by both the national transportation policy and the rail transportation policy. The only opposition to the consolidation was from a motor carrier trade organization and trade unions which have filed court actions to review the decision. No shippers, railroads, or governmental entities opposed the consolidation.

The Commission concluded hearings in August 1985 in another merger proceeding involving the Atchison, Topeka and Santa Fe Railway Company (ATSF) and the Southern Pacific Transportation Company (SPT).¹ SPT has been held in an independent voting trust since the merger of the holding companies that own these two Class I railroads. The Commission's consideration of the proposed merger will be particularly important, since the transaction involves the consolidation of largely parallel lines, and although the applicants allege that substantial savings will result, opponents assert that the merger would diminish or eliminate existing and future competition. Federal and state governmental agencies and a number of railroads have par-

ticipated in this complex case, and some railroads protesting the consolidation are seeking the Commission's imposition of conditions to ameliorate the alleged adverse effects on competition that they anticipate such a merger would create.

Rates

Current common carrier rate levels are derived from an updated "rate base" established by Congress as those rates that were in effect on October 1, 1980. Rates existing as of that date were subject to one-time complaints. Rail shippers filed 864 complaints challenging the reasonableness of these base rates, and by the end of fiscal year 1985 most of this litigation had been substantially resolved.² Considerable traffic continues to move under published tariff rates, despite the existence of numerous industry-wide exemptions and 30,348 rail transportation contracts.³

Base rates are updated by the Commission each quarter-year to account for changes in railroad cost.⁴ The Commission adopted new procedures in fiscal year 1985 for the calculation of an "all inclusive" index of railroad input costs, and the methodology for the computation of quarterly rail cost adjustment factors⁵ that

¹ Of the 864 original complaints, 827 have either been dismissed or settled. Of the remaining 47, 21 are reasonably expected to be settled. Ex Parte No. 47-1, Complaints Filed Pursuant to The Savings Provision Of The Staggers Rail Act of 1980 (Section 209, Public Law 96-448) (not printed), served August 8, 1985.

² As of September 30, 1985.

³ The updating was done through a series of decisions issued in Ex Parte No. 290 (Sub No. 2), Railroad Cost Recovery Procedures (not printed), effective January 1, 1985, April 1, 1985, July 1, 1985, and October 1, 1985.

⁴ Ex Parte No. 290 (Sub No. 2), Railroad Cost Recovery Procedures (not printed), served January 2, 1985.

⁵ Finance Tracker No. 30400, Santa Fe Southern Pacific Corporation, In re: Southern Pacific Transportation Company.



the establishment and/or prescription of through rates or routes and reciprocal switching.¹⁴ The Commission adopted the proposed rules with some modifications at a public voting conference held on September 11, 1985. While probably not resolving all issues, both the market dominance and competitive access proposals represent a good-faith effort by the parties to accommodate the legitimate interests of both shippers and railroads.

In other areas, the Commission continued its review of comments received concerning interim second-tier contract discovery rules.¹⁵ Other rules concerning the filing of railroad contracts and first-tier contract summary information were affirmed, but the U.S. Court of Appeals for the Second Circuit ruled that easier second-tier disclosure was required for administrative complaint proceedings.¹⁶ The major concern over devising new second-tier discovery rules involves the balancing of the conflicting interests of confidentiality of contracts with the competing interests of potential complainants to have all the information necessary to perfect a complaint. However, despite the apparent controversy over the interim rules, only a small number of complaints have been lodged with the Commission even though approximately 30,000 contracts have been filed with it since the rules were issued.

The Commission also carried out

its ongoing review of rail rate actions on recyclables and on railroad compliance with the recyclable rate cap, and examined the rate cap itself in light of more recently available data. In past decisions, the Commission calculated the recyclable rate cap at a revenue/variable cost ratio of 146 percent¹⁷ and ordered the railroads to reduce their recyclable rates on an aggregated basis to achieve initial compliance with the cap.¹⁸ After initial compliance, the Commission provided for additional "fine tuning" by allowing future complaints challenging individual rates that were still above the cap after aggregate reductions were taken, as well as challenges to increases in individual rates below the cap. During the past fiscal year, the Commission updated rate caps to reflect more accurately revenue levels required to cover operating expenses and a reasonable profit.¹⁹ Caps of the following amounts were established for the following calendar years: 143.8 percent for 1982, 152.2 percent for 1983, 158.6 percent for 1984, and 153.4 percent for 1985. Reparations to shippers who paid in excess of the original 146-percent level were generally postponed pending this decision. The Commission concluded that reparations should be based on what the applicable revenue/variable cost ratio would have been in prior

¹⁴ Ex Parte No. 144, 58 R.R. 1 (Interim Reciprocal Switching), 1985-1986, 1986-1987, 1987-1988.

¹⁵ Ex Parte No. 145, 58 R.R. 1 (Interim Second-Tier Contract Discovery), 1985-1986, 1986-1987, 1987-1988.

¹⁶ *Wash. Times Herald*, 1986, at 1, 1986, at 1, 1986, at 1.

¹⁷ Ex Parte No. 140, 58 R.R. 1 (Recyclable Rate Cap), 1985-1986, 1986-1987, 1987-1988.

¹⁸ Ex Parte No. 141, 58 R.R. 1 (Recyclable Rate Cap), 1985-1986, 1986-1987, 1987-1988.

¹⁹ Ex Parte No. 142, 58 R.R. 1 (Recyclable Rate Cap), 1985-1986, 1986-1987, 1987-1988.

calendar years if it had been periodically recalculated.²⁰

In the matter of car allowances and car-hire, a joint negotiating committee representing railroads, tank car owners, and lessors submitted a proposed new national tank car mileage allowance system to replace an existing 1979 agreement.²¹ The proposal made several significant changes and modifications in the present allowance system, and the committee requested that portions of it be made effective as of the date of filing of the agreement, but the Commission deferred action and stated that the entire agreement should be subject to public comment.

In a series of decisions, the Commission began to conduct a thorough review of its existing railroad car-hire regulatory framework. The Commission found that over the past several years the car-hire formula in use had resulted in distorted levels of charges compared to what would have been reasonably expected in relation to either inflation or the general demand for rail cars. The Commission suspended the requirement that railroads update their car-hire charges for 1983²² and proposed suspension of similar updating for 1984 and subsequent years.²³

A major review of car-hire regulation for all car types other than boxcars was instituted by an advance notice of proposed rulemaking.²⁴ The same review of boxcars begun in fiscal year 1983²⁵ is ongoing.

The Commission also rescinded Car Service Rule 15 and, in discussing the respective rights and obligations of road-haul and switching railroads with respect to furnishing freight cars, reaffirmed the traditional policy that, absent agreement, a rail carrier offering transportation service to a shipper must supply the necessary equipment.²⁶

Twenty-two states have been certified by the Commission to regulate intrastate rail traffic.²⁷ In twelve others, intrastate traffic is currently regulated by the Commission,²⁸ while no regulation of intrastate rail traffic exists in seven states and the District of Columbia.²⁹ Eight states are provisionally certified to regulate within their borders pending permanent certification.³⁰

During the past fiscal year, the Courts have affirmed several Commission actions in intrastate matters while confirming the Commission's

²⁰ Ex Parte No. 334 (Sub No. 6), *Review of Car Hire Regulation* (not printed), served April 29, 1985.

²¹ Ex Parte No. 346 (Sub No. 19), *Boxcar Car Hire and Car Service* (not printed), served June 22, 1984.

²² Ex Parte No. 241 (Sub No. 1), *Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules and Practices* (not printed), served May 21, 1985.

²³ Eight states were certified in earlier fiscal years. The fourteen additional states are: Alabama, Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, Montana, New Mexico, New York, Oregon, and Wisconsin.

²⁴ Nine states were previously in that category. The three additional states are Alaska, Florida, and Idaho.

²⁵ These states are Arizona, Hawaii, Maine, Massachusetts, Rhode Island, Vermont, and South Dakota.

²⁶ These states are Colorado, Louisiana, Minnesota, Nebraska, Oklahoma, Utah, Washington, and Illinois.

²⁷ A recent court decision found that the Commission erred in allowing additional complaints on an individual rate basis after aggregate compliance was made. *North & Western Ry. Co. v. United States*, 763 F.2d 373 (D.C. Cir. 1985). This decision may significantly affect the Commission's implementation of Staggers Act rate-yield provisions and its annual updates of the rate cap.

²⁸ Ex Parte No. 326, *Investigation of Tank Car Allowance and Practices*, served September 20, 1985.

²⁹ Ex Parte No. 334 (Sub No. 6), *Service Compensation, Basic Per Diem Charges, and Provisions of the Annual Car Hire Charge Update* (not printed), served April 29, 1985.

³⁰ Ex Parte No. 334 (Sub No. 7), *Agreement of Car Hire Update* (not printed), served April 29, 1985.



broad authority in this area. Some examples are: a Commission decision denying the State of Texas certification to regulate intrastate rail traffic and refusing to extend its provisional certification;³¹ recognition of the Commission's authority to require Illinois, as a condition of its certification, to adopt all Commission-ordered exemptions from regulations;³² and a Commission finding that a state may not allow a showing of railroad inefficiency to automatically make unreasonable any rate above the jurisdictional threshold.³³

Finally, the Commission adopted new credit regulations applicable to railroads³⁴ and other carriers and further refined its method of estimating the cost recovery percentage used in making jurisdictional threshold findings for rate regulation of market-dominant traffic.³⁵

Joint Rate Surcharges and Cancellations³⁶

Applications of joint-rate surcharges or rate cancellations by the nation's railroads during fiscal year 1985 were practically negligible, ex-

cept for the application of some light-density-line surcharges, and cancellations by major railroads were almost entirely limited to unused or obsolete rates. Correspondingly, the impact on the industry of such surcharges and cancellations was slight.

Fiscal year 1985 marked the first year that railroad companies were no longer able to use the surcharge provisions of the Staggers Rail Act.³⁷ The primary purpose of those provisions was to provide railroads a mechanism with which they could obtain rapid relief from non-compensatory divisions of rates, and to permit rail carriers to earn an adequate return from light-density-line service. The provisions authorized an individual railroad unilaterally to impose a surcharge when the joint rate did not provide the railroad with 110 percent of its variable costs. The general surcharge provision expired at the end of fiscal year 1984 after the Commission had extended it for a one-year period. Individual rail carriers also are authorized unilaterally to impose a surcharge on traffic originating or terminating on light-density lines when existing rates do not provide revenue adequate to cover 110 percent of their variable costs plus 100 percent of the reasonably expected costs of continuing to operate the line. The statute imposes no expiration date on light-density surcharges. Further, railroads are still permitted to apply negative surcharges to joint rates. In response to a petition, the Commission created an industry-wide exemption to permit

³¹ *Railroad Commission of Texas v. I.C.C.*, 769 F.2d 221 (D.C. Cir. 1985).

³² *Illinois Commerce Commission v. I.C.C.*, 749 F.2d 875 (D.C. Cir. 1984).

³³ *Public Service Co. of Indiana v. I.C.C.*, 749 F.2d 753 (D.C. Cir. 1984).

³⁴ Ex Parte No. 73, *Regulation for Payment of Rates and Charges* and embraced cases (not printed); served January 16, 1985.

³⁵ Ex Parte No. 399, *Cost Recovery Percentage* (not printed); served January 25, 1985.

³⁶ This section fulfills the requirements of Section 217(c)(1) of the Staggers Rail Act of 1980 (P.L. 96-448) for the Commission to report in its Annual Report to Congress on the following matters concerning joint rate surcharges and cancellations: (a) the effect on shippers, ports, Class II and Class III rail carriers, railroad employees, etc.; (b) the number of surcharges, revenue collected from them, surcharge cancellations; and the number of joint rate cancellations by the Consolidated Rail Corporation and all other rail carriers; and (c) operation of special remedies available to Class II and Class III rail carriers under Section 217.

³⁷ Section 10705aa of Title 49, United States Code introduced by the Staggers Rail Act, effective October 14, 1980.

railroads to file negative surcharge allowance tariffs without the concurrence of other carriers.¹⁰

To develop information on the status of surcharges as well as other activities under Section 10705a, the Commission's Office of Transportation Analysis conducted a telephone survey of the railroads that were most active in instituting surcharges subsequent to the Staggers Act. Survey results indicate that many railroads are keeping the regulatory surcharges in place, while some have removed them with the advent of boxcar deregulation. Many have maintained the light-density-line surcharges from previous years, but the traffic to which the surcharges applied has declined sharply. Short line railroads are continuing to use the light-density-line surcharges to recover extra switching costs of reaching out-of-the-way shippers, to supplement state aid, and to insure revenue levels covering fixed costs regardless of cyclical changes in traffic. The major railroads responded that joint rate cancellations—even those not coming under the special provisions of the Staggers Act—have been practically dormant for the last two fiscal years. In general, the impression gained from the survey was that contract rates and rebates have lately done more to affect routing than have surcharges and cancellations.

The Staggers Act stipulates that in its reports to Congress on activity under the Section 10705a provision, the Commission must provide a

breakdown between data concerning Conrail and other of the nation's railroads. In previous years Conrail was the dominant force in the railroad industry in implementing joint rate surcharges and cancellations and, during fiscal year 1985, Conrail cancelled some surcharges primarily by including them in new "independent factor" joint rates. These involve single-factor joint rates with underlying revenue components assignable to each participating railroad (but not published) that may be independently changed by each. Because previous surcharge amounts are included in new rates, the Commission estimates that the net revenue impact to Conrail is practically nil.

As for railroads other than Conrail, Grand Trunk Western consolidated its surcharges in a publication, in August 1984. Guilford Transportation Industries' related railroads, including the Boston and Maine, the Delaware and Hudson, and the Maine Central, cancelled their brick, wine, beer, and pulpboard surcharges; three railroads, the Missouri Pacific, the City of Pineville line, and the Philadelphia Belt Line, that had previously issued surcharges indicated that there were no longer any in effect; and one Class III line reduced a previous surcharge. The Commission generally estimated that the revenue change from regular commodity or territorial surcharges was negligible in fiscal year 1985 for Class III railroads. One reason for this is the fact that the traffic base for the surcharges shrank, and in this regard one railroad advised the ICC that its traffic subject to surcharge

¹⁰ Docket No. 38777, *Regulation of Freight Tariffs*, 105 I.C.C. 618 (1984), 105 I.C.C. 618 (August 10, 1984).



was down to a level of 28 percent relative to all traffic on the line. In response to the Commission's surcharge survey mentioned above, eleven Class III rail lines indicated the retention of regular surcharges, while three indicated that surcharges were no longer in effect.

While changes in light-density-line surcharges during fiscal year 1985 exceeded changes in regular surcharges or joint-rate cancellations, they were far less numerous than in previous fiscal years. At the close of the past fiscal year, Conrail had two light-density-line surcharges still in effect. In most cases, however, Conrail's surcharges were eliminated with the abandonment of the branch lines to which they applied. Class I and II railroads other than Conrail instituted at least eleven new light-density-line surcharges. The most active rail lines among these were the Southern Pacific (including Northwestern Pacific) and the Soo Line, and one surcharge was removed by these railroads. Class III lines together added one such surcharge, increased a previous one, and cancelled six others, and the revenue effects of these latter actions appear to be virtually negligible. The Rahway Valley Line, responsible for the six cancelled surcharges, cited a \$7,000 reduction, while the Central of Vermont line cited a \$1,000 increase.

Cases involving three light-density-line surcharges came before the Commission's Suspension Board in fiscal year 1985, but none of the surcharges in question were suspended or investigated.

Two joint-rate cancellations were brought before the Suspension Board during the past fiscal year. One was withdrawn, and the Board and appellate division voted not to suspend or investigate the other. Over the past three fiscal years, the statutory basis on which joint-rate cancellations have been considered before the Commission has shifted from Section 10705a to Section 10705(e) of the Staggers Act, the latter section being one that historically has governed joint-rate cancellations. The reason for this shift is that, while section 10705a is intended to insure immediate relief to railroads whose divisions of joint rates yield a ratio of revenue to variable cost of less than 110 percent, the ratio for many joint rates subject to cancellation has exceeded 110 percent.

The special provisions of the Staggers Act concerning joint-rate surcharges and cancellations are aimed at assuaging adverse impacts on Class II and Class III railroads. Of the railroads contacted in this group as part of the Commission's surcharge survey, 27 reported that current policies concerning the handling of surcharges and cancellations had no impact on, or did not apply to, their operations. Three rail lines indicated some trouble negotiating with major connecting lines, or they described carrier attitudes toward the entire process as having worsened. Five respondents indicated that relations with connecting trunk lines worked to their benefit and aided them in coping with other carrier actions. Three respondents complained strongly about added paperwork and confusion in simply deter-

mining what was happening in the area of surcharges or cancellations, or how they were affected. Three others cited business losses from previous surcharges, while two other respondents indicated that business levels had either been maintained or increased as a result of surcharge and cancellation provisions.

None of the responding short lines indicated any use of the special protective clauses provided in Section 10705a. One short line indicated that it might have made use of these clauses but did not because it believed the Commission would not be receptive to this course of action. For the most part, short lines appeared able to resolve matters directly with connecting lines, thus obviating the need for formal action on the part of the Commission.

The past fiscal year also saw the resolution of an important proceeding involving Conrail's 1982 cancellation of certain joint rates.³⁰ The Pittsburgh and Lake Erie Railroad Company (P&LE) had complained that, as a result of Conrail's joint-rate cancellations, P&LE could not participate in through routes to handle traffic that Conrail moved from origin to destination, and that, as a consequence, shippers would no longer have a choice between Conrail-P&LE through routes and Conrail single-line routes between origin and destination stations served by Conrail. P&LE requested that joint rates be prescribed to replace the rates unilaterally cancelled by Conrail. P&LE's complaint was dismissed and its re-

quest for prescribed joint rates was denied because the Commission determined that P&LE had failed to show that a joint-rate prescription was in the public interest.

Later in the fiscal year, the Commission established rules for the handling of proceedings similar to the P&LE case. In an open conference on September 11, 1985, the Commission voted to adopt rules to govern its handling of "competitive access" issues, i.e., the cancellation of joint rates and through routes, and the prescription of joint rates, through routes, and reciprocal switching arrangements.³¹ These rules were adopted through rulemaking that involved numerous parties representing carriers, shippers, and governmental entities.

The Commission's new competitive-access rules provide for notification, explanation, and justification prior to a party's petition for the institution of a proceeding by the Commission and additionally provide that, when certain standing requirements are met, the Commission will suspend a proposed cancellation of a through route and/or joint rate if the cancellation could eliminate effective railroad competition. The new rules set forth conditions and standards under which the Commission would investigate cancellations or prescribe through routes, through rates, and reciprocal switching, and the use of these rules should result in more efficient and equitable resolution of competitive-access issues.

³⁰ Decision No. 38170 (Sub-No. 1), Pittsburgh & Lake Erie Railroad Company v. Commodore Rail Corporation (not printed), issued August 9, 1985.

³¹ Ex. Parte No. 345 (Sub-No. 1), Interstate Rail Commission, issued October 31, 1985, I.C.C. 2d.



Acquisition, Operation, and Construction.

The Commission proposed to exempt from regulation all acquisitions and operations under 49 U.S.C. 10901.⁴¹ The exemption would not apply if a Class I railroad abandoned a line and a Class I railroad then acquired the line in a transaction that would result in a major market extension as defined in 49 C.F.R. 1180.3(c). Sixteen supporting comments and six opposing comments were filed in response to the ICC's proposal. The final rules were adopted essentially as proposed at an open voting conference held on November 6, 1985.

There were also three individual proceedings that were noteworthy during fiscal year 1985. The Commission granted a request filed by the Gulf & Mississippi Railroad Corporation to exempt the purchase from the Illinois Central Gulf Railroad Company (ICG) of 713 miles of track known as the East Mississippi line.⁴² On May 8, 1985, Chicago Central & Pacific Railroad Company filed a petition to exempt the acquisition and operation of 679 miles of rail line in Illinois, Iowa, and Nebraska from the ICG, and public comment on the impact of the proposed transaction was requested by the ICC.⁴³ On September 24, 1985, appeals were filed to a decision of an Administra-

tive Law Judge that authorized the Tongue River Railroad Company to construct an 89-mile rail line between Miles City and Ashland, Montana.⁴⁴

Abandonments

During fiscal year 1985, railroad line abandonments were filed with the Commission under provisions of the Interstate Commerce Act and under provisions of the Northeast Rail Service Act of 1981 (NERSA) relative to Conrail abandonments.

Conrail continued an active abandonment program that began with the August 1981 enactment of NERSA. In the past fiscal year, Conrail filed 29 applications to abandon 39.64 miles of line, a total of 68 Conrail applications involving 327.50 miles were granted, and 9 applications involving 36.39 miles were pending at the end of the year. Ten applications involving 51.71 miles were dismissed after Conrail and interested parties either reached an agreement for the sale of the lines, or accepted Commission-imposed terms of sale. In one Conrail application involving 1.45 miles, an offer of financial assistance was pending at year's end. There were also 40 notices of insufficient revenues involving 118.89 miles of line on file with the Commission by year's end, thus indicating that applications to abandon these lines would likely be filed in fiscal year 1986. In addition, Conrail filed about 500 additional notices of insufficient revenues just before the October 31, 1985, filing deadline expired in fiscal year 1986.

⁴¹ Ex Parte No. 392 (Sub-No. 1), *Class Exemption for Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901* (not printed), served August 27, 1985.

⁴² Finance Docket No. 30439, *Gulf & Mississippi Railroad Corporation—Purchase (Portion) Exemption—Illinois Central Gulf Railroad Company* (not printed), served January 2, 1985.

⁴³ Finance Docket No. 30663, *Chicago Central & Pacific Railroad Company—Purchase (Portion) Trackage Rights and Securities Exemption* (not printed), served September 17, 1985.

⁴⁴ Finance Docket No. 30186, *Tongue River Railroad Company—Construction and Operation—in Custer, Powder River and Rosebud Counties, MT*.

During the past fiscal year other railroads actively pursued efforts to rationalize their systems. A total of 109 applications involving 2,777.59 miles were filed. At the end of the fiscal year, 52 applications to abandon 1,396.01 miles, and 8 notices of intent to abandon 209.79 miles, were pending. The Commission issued decisions on the merits of 83 applications involving 2,118.15 miles. Of those, 80 applications involving 2,015.3 miles were granted and 3 involving 102.85 miles were denied. Twenty applications involving 605.17 miles were dismissed.

In fiscal year 1985, 38 abandonment applications involving 595.94 miles were automatically granted because they were unopposed. In cases where there was opposition, the Commission decided not to investigate 6 cases involving 192.14 miles, to set 43 cases involving 1,355.67 miles for modified procedure, and to set 4 cases involving 208.13 miles for oral hearing.

Nine offers of financial assistance to purchase rail lines totalling 167.55 miles were made. At the end of the fiscal year, 2 offers involving 144.01 miles were pending. Two rail lines were sold during the year resulting in the transfer of 17.70 miles of track.

Numerous railroads filed exemption requests for lines that had been out of service two years or more under the special procedures provided by Commission regulations,⁴⁰ and 82 such notices involving 604.32 miles of track were filed with the Commission. At the end of the fiscal

year, 78 notices involving 556.76 miles had been granted, 3 involving 63.71 miles had been dismissed, and 15 involving 56.61 miles were pending.

Rail lines that do not meet the criteria for a notice of exemption may be abandoned through individual exemption petitions. In fiscal year 1985, 49 petitions were filed with the Commission involving 548.91 miles of track proposed for abandonment. Forty-seven petitions were granted involving 540.68 track-miles, 2 petitions involving 2.5 miles were dismissed, and 15 petitions covering 138.13 miles of track were pending at the end of the year.

Concerning abandonments proposed by bankrupt railroad companies, the Commission recommended to the Reorganization Court overseeing the financial affairs of the Chicago, Milwaukee, St. Paul and Pacific Railroad the authorization of abandonment of 4 line segments totalling 11.44 miles, and the denial of abandonment authorization for a 0.93-mile segment.

In major policy decisions, the Commission proposed last fiscal year to modify its standards for determining costs, revenues, and return on value in abandonment proceedings. The general purpose of the proposed changes was to permit a more accurate determination of the cost of rail operations in connection with rail abandonment and subsidy proceedings. The Commission proposed to distinguish economic cost of operation from actual avoidable costs, to modify the computation of the rate of return used to determine economic costs, and to incorporate certain re-



gional subsidy standards.⁴⁶ Additionally, the Commission modified the rate of return to be used in the computation of railroad opportunity costs in abandonment proceedings. Under the new standard, a railroad must earn an 18.6-percent return⁴⁷ on the net liquidation value of those of its assets invested in a line in order to cover its opportunity costs.

The Commission also proposed regulations to implement Public Law No. 98-11 which amended Section 8 of the National Trails System Act.⁴⁸ At an open voting conference held on October 16, 1985, the ICC decided that the amendment only permits interested parties to enter into voluntary agreements with railroads to acquire or use, for trail and rail banking purposes, the rights-of-way of railroad lines that are approved for abandonment under (1) 49 U.S.C. 10903-04, (2) NERSA, and (3) exemption under 49 U.S.C. 10505 or 49 C.F.R. 1152.50, but not those of bankrupt railroads. Prospective users must submit a comment containing a statement that they intend to take full responsibility for management of the right-of-way, for legal liability, and for payment of taxes on the land.

The Commission issued a notice of proposed rulemaking to modify its regulations governing offers of financial assistance. Under the proposal, parties requesting the Commission to set the terms and conditions of sale or subsidy would be required to

submit their evidence concurrently with their request, rather than 30 days after submission of the request, as required by the present rules.⁴⁹

Two significant decisions dealing with the exemption of out of service lines were issued in fiscal year 1985. The Commission amended its regulations to provide that a complaint regarding a cessation of service over a rail line filed in any U.S. District Court removes the line from eligibility for an exemption. This amendment ensures that the class exemption will not be available where there is a continuing transportation interest in the involved line.⁵⁰ The Commission also modified its regulations to require railroads to notify, in writing, the Department of Defense (Military Traffic Management Command), that a railroad line out of service for at least two years will be abandoned, or that service or trackage rights over the line will be discontinued. This modification increases the time available for the Department of Defense to evaluate the relation of a specific rail line to the nation's defense needs.⁵¹

The Commission also initiated a proceeding to amend its rules to require parties to file appeals from the initial decision in investigated abandonment proceedings in order to exhaust their administrative remedies before going to court.⁵²

⁴⁶ Ex Parte No. 274 (Sub No. 11) Abandonment Regulations—Costing (not printed), served January 27, 1985.

⁴⁷ This figure was developed in Abandonment of Rail Lines: Use of Opportunity Costs, 10 I.C.C. 202, served December 28, 1984.

⁴⁸ Ex Parte No. 274 (Sub No. 13) Rail Abandonment: Use of Rights-of-Way as Trails (not printed), served February 20, 1985.

⁴⁹ Ex Parte No. 274 (Sub No. 14) Rail Abandonment: Offers of Financial Assistance (not printed), served April 11, 1985.

⁵⁰ Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights), 10 I.C.C. 201, served February 26, 1985.

⁵¹ Exemption of Out of Service Rail Lines (Notice to the Department of Defense), 10 I.C.C. 203, served June 11, 1985.

⁵² Ex Parte No. 274 (Sub No. 15) Revision to Abandonment Regulations (not printed), served August 29, 1985.

The Commission denied abandonment requests in cases where insufficient cost evidence was adduced to show that a line was being operated at a loss,⁵³ and where the evidence of record demonstrated a clear adverse impact on shippers and communities and a minimum burden on a railroad's operation of a line that was not quite earning an 18.6-percent return on both net liquidation value and rehabilitation costs.⁵⁴

Exemptions

The Commission continued to use its rail-exemption authority to reduce unnecessary regulation during the past fiscal year. The Commission granted 109 exemptions of financial transactions, including acquisitions of rail lines, lease and trackage rights agreements, and securities issuances.⁵⁵ Additionally, a class exemption was authorized for trackage rights agreements not filed or sought in responsive applications in rail consolidation proceedings.⁵⁶ These individual and class exemptions were granted where the transportation or public impact was determined to be minimal, or where regulation was found to be unnecessary to protect shippers from abuses of market power.

The Commission's previously granted boxcar exemption⁵⁷ was reversed, in part, and the Supreme Court denied a petition for a writ of certiorari filed by the Commission and the Solicitor General.⁵⁸ The exemption for single-line boxcar rates remains in effect, but the Commission reasserted jurisdiction over boxcar joint rates and withdrew the exemption's car-hire provisions.⁵⁹ The Commission is reviewing further public comments on whether boxcar joint rates should be exempted from regulation,⁶⁰ and on options for future regulation or deregulation of boxcar car hire.⁶¹

The previously granted export coal exemption⁶² was reversed, and the Supreme Court denied a petition for a writ of certiorari filed by the Commission and the Solicitor General.⁶³ As a result, the exemption is no longer in effect.

The Commission also granted more than 140 individual exemptions to allow payments of reparations, waivers of undercharges, and other charge adjustments. Many of these exemptions were granted to accommodate rail carriers and shippers who had entered into rate contracts by permitting contract rates to apply

⁵³ Exemption from Regulation, *Branch Traffic*, 367 F.C.C. 425 (1987) (S.C. No. 377, 1986).

⁵⁴ *See* *supra* note 53, at 427 (1986).

⁵⁵ *See* *supra* note 53, at 428 (1986); 360 F.C.C. 1005 (D.C. Cir. 1985), *rev. denied* 100-5 (S.C. 1986).

⁵⁶ *See* *supra* note 53, at 427-428 (1986). Exemption from

Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁷ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁸ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁹ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁶⁰ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁶¹ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵³ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁴ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁵ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁶ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁷ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).

⁵⁸ *See* *supra* note 53, at 427-428 (1986). Exemption from Regulation, *Branch Traffic*, *supra* note 53, at 427 (1986).



to a limited number of shipments transported prior to the effective contract dates, but subsequent to the parties' reaching agreement on essential terms. The Commission proposed to establish an exemption permitting a railroad to charge a contract rate, rather than its published tariff rate, where shipments are transported after agreement has been reached on a contract, but prior to the contract's effective date.⁶⁴ The rules were adopted essentially as proposed at an open voting conference held on October 16, 1985.

The Commission adopted rules that eliminate the letter-of-intent requirement in Special Docket cases involving reparations or waiver of undercharges of \$5,000 or less.⁶⁵ In addition, the Commission exempted the filing of rail allowances (negative surcharges) by a rail carrier participating in a joint rate without obtaining concurrences from other participating carriers.⁶⁶

On further review, the Commission's decision that a federal exemption decision is a federal standard and procedure that states must follow was affirmed.⁶⁷ A decision where the ICC applied its 1931 exemption of containerized intermodal, or trailer-on-flatcar (TOFC/COFC) service pro-

vided by rail carriers⁶⁸ to intrastate traffic,⁶⁹ was reversed in part.⁷⁰

Passenger Service

Last fiscal year, the Commission ordered an inspection train sought by the National Rail Passenger Corporation (Amtrak) to be run over the lines of the Louisiana and Arkansas Railway Company, between Baton Rouge and Shreveport, Louisiana. The Commission initiated a proceeding requested by Amtrak to determine just and reasonable compensation to be paid by Amtrak for the inspection train, after which the parties reached a mutual agreement on the matter.⁷¹ The inspection train studied the feasibility of expanded passenger operations under congressional directive.⁷²

In another case, the Commission prescribed just and reasonable compensation to be paid by Amtrak for use of the facilities, track, and service of the Metro-North Commuter Railroad Company and the New York Metropolitan Transit Authority involving rail lines and related facilities extending 74 miles from New York City's Grand Central Terminal to Poughkeepsie, New York.⁷³

⁶⁴ Ex. Parte No. 367, Sub No. 356. Exemption from Regulation Agreement concerning Made Subject to a Contract Rate. Issued in proposed rulemaking published April 10, 1985, at 50 Fed. Reg. 14171, 14173, corrected May 6, 1985, at 50 Fed. Reg. 19836.

⁶⁵ No. 32187 (Sub No. 11) Spec. Exemption Proceeding. Exemption from Letter Proceeding Requirement involving Amtrak of \$5,000 or less. 11/17/85. (April 22, 1986).

⁶⁶ No. 34135. Negative Surcharge. 11/17/85. Exemption (not printed), served August 16, 1985.

⁶⁷ State v. Interstate Rail Rate Authority, Civ. No. 248-86, 17 F. 3d 139 (1983), aff'd sub nom. *Interstate Commerce Commission v. Ill.*, 753 F.2d 876 (D.C. Cir. 1985).

⁶⁸ Improvement of TOFC/COFC Regulation, 364, C.C. 731 (1981), aff'd sub nom. *American Trucking Ass'n v. ICC*, 656 F.2d 1115 (5th Cir. 1981).

⁶⁹ No. 39027. *Reparations* under 49 U.S.C. 11421a, by Missouri-Kansas-Texas R.R. Co. for Review of an Order of the Railroad Commission of Texas (not printed), served January 23, 1984, and No. 34794. *Reparations* of Rock-Rail Terminal Co. for Under 49 U.S.C. 11421a, Review of an Order of the Railroad Commission of Texas (not printed), served April 13, 1983.

⁷⁰ *Trucks v. Intermodal*, 775 F.2d 457 (5th Cir. 1985).
⁷¹ Finance Docket No. 34677. Amtrak and Louisiana & Arkansas Railway Company. Use of Tracks and Facilities and Establishing just compensation (not printed), served October 1, 1984.

⁷² Senate Report 98-673.

⁷³ Finance Docket No. 34678. National Rail Passenger Corporation Application under Section 4104 of the Rail Passenger Service Act (not printed), served July 27, 1985.

During fiscal year 1985, designated agents of the Commission's Office of Compliance and Consumer Assistance issued 9 emergency orders to prevent rail-passenger service interruptions. Permission was granted to authorize Amtrak passenger trains to use alternate routes while they were enroute to their destinations. Such orders become necessary, and are accordingly issued, whenever a railroad company operating an Amtrak train cannot move the train over its normal route because of circumstances beyond its control, and an alternate route exists for use over the lines of a connecting rail carrier.

The Commission also determined during the past fiscal year that an order of the State of California which required the Southern Pacific Transportation Company to refrain from removing existing commuter facilities on its 66-mile "Coast Line" between Oxnard and Los Angeles, California, was not unreasonable, since the passenger service in question was indefinitely suspended and the state would not require the service to be resumed unless it was fully subsidized.

Freight Car Service

Surpluses of railroad controlled freight cars continued to decline in fiscal year 1985. The average daily surplus at the end of December 1984 was 153,839, and that figure dropped to a daily average of 104,025 cars by the end of September 1985, for a

daily average during the fiscal-year period of 126,796 cars. That decline, however, is principally a function of reduced ownership of railroad equipment rather than an increase in equipment utilization. For example, on October 1, 1984, Class I railroads reported a combined-fleet ownership of 966,823 cars, but by October 1, 1985, the ownership level had dropped to 879,290 cars. This constituted a net reduction in the combined fleet of 87,533 cars, the difference between the number of cars installed (999) and the number of cars retired or otherwise lost from the control of the Class I carriers (88,532).

In fiscal year 1985, the entire rail car fleet of Classes I, II, and III railroads, private car companies, and shippers consisted of 1,436,146 cars, an overall net reduction of 64,399 cars from the prior fiscal year. This figure is particularly significant in that it reveals that 22,834 of the 87,533 cars lost by Class I carriers were offset by other contributors to the rail-car fleet.

The average carrying capacity of a freight car placed into rail service during fiscal year 1985 was 95 net tons, an increase of six net tons over per-car tonnage figures registered ten years ago. While the aggregate carrying capacity of cars installed was 94,905 net tons, there was an aggregate capacity loss of 6,408,826 net tons owing to the retirement of cars accounting for 6,503,731 net tons of capacity.

Fiscal-year 1985 freight-car loadings totaled 19,322,312, or a 4.9-percent decrease from the fiscal-year 1984 carloading total of 20,321,864.

¹ 45 U.S.C. §6201.
Emergency Docket No. 80171, Southern Pacific Transportation Company, (Discontinuance of Passenger Train Service on Ventura Coast Line), August 1, 1984, 44 FR 46,100, 2d ed. (1985).



Coal ranked first in carloadings with 5,634,634 cars accounting for 29.1 percent of total cars loaded, yet this represented a decrease of 5.5 percent over the 5,961,410 cars loaded in fiscal year 1984. The second heaviest commodity loadings were those for chemicals and allied products—1,249,919 cars—or a 1.9-percent decrease from the 1,274,446 cars similarly loaded in fiscal year 1984. Cars carrying grain in fiscal year 1985 ranked third in total loadings with 1,181,632 cars, a decrease of 18.5 percent from the prior fiscal year's loading figure of 1,450,617 cars.

The greatest percentage increase in fiscal-year car loadings—7.6 percent—occurred in the loading of crushed stone, gravel and sand, followed by a 6.6-percent increase in cars loaded with motor vehicles and equipment. Last fiscal year saw a .05-percent decrease in cars loaded with food and kindred products accounting for 564,358 cars versus 564,660 cars similarly loaded during the prior fiscal year. Grain-mill product loadings also decreased by 4.4 percent with 529,838 fiscal-year 1985 car loadings, compared to a fiscal-year 1984 total of 554,263 cars.

In fiscal year 1985, there were 2,791,364 flatcars loaded with 4,499,407 trailers/containers, a 7.5-percent increase over fiscal-year 1984's total of 2,597,021 similarly loaded flatcars transporting 4,514,562 trailers/containers.

The locomotive ownership of Class I railroads on October 1, 1984, consisted of a total of 24,652 units, while this ownership was down to 22,818 units—a 1,834-unit reduction—on Oc-

tober 1, 1985. At the end of fiscal year 1985, Class I railroads had 47 diesel-freight, 92 multi-purpose, and 23 switch locomotives on order.

During fiscal year 1985, the Commission issued 23 emergency and rerouting orders in the furtherance of railroad operations. The majority of these provided for the continuation of essential rail services to shippers located on the lines of the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Securities

Fiscal year 1985 saw the Commission propose exemptions for securities issued or obligations assumed by Class II and III railroads, or by a party acquiring a rail line in a proceeding under 49 U.S.C. 10905 (offers of financial assistance to avoid abandonment), and for equipment trust certificates issued by any carrier, regardless of size.¹⁰ For these types of transactions, no filings with the Commission would be required. The Commission also proposed to exempt issuances by Class I railroads and their holding companies, subject to the filing of a notice and a 15-day opportunity for protest. The regulations were adopted in substance at an open voting conference held on October 16, 1985.

During fiscal year 1985, 18 applications for the issuance of securities or for the assumption of obligations were filed. All were granted.

¹⁰ Ex Parte No. 397, *Exemption of Railroads from Securities Regulation Under 49 U.S.C. 11301* (not printed), served April 5, 1985. This exemption does not apply to securities that are directly related to operations under 49 U.S.C. 10901 and 11314.



TRUCKING COMPANIES

During the fiscal year the Commission continued to reduce regulatory barriers to entry and exit from the trucking industry, thereby enhancing carrier competition and efficiency, while simultaneously striving to meet the needs and protect the interests of the shipping public. Certain filings formerly required in the area of finance and rates were either eliminated or consolidated, the burden of proof for parties seeking or opposing grants of authority were more clearly defined, and the safety records of applicants were given new emphasis.

General Financial Condition

Commission data for 100 of the largest motor carriers of property for the 12 months ending June 30, 1985, and June 30, 1984, indicate that operating revenues rose 6.6 percent to \$17.2 billion and revenue tons hauled increased slightly, about one-half of one percent. Net carrier operating income declined 18.8 percent to \$671.6 million and net income decreased 20.5 percent to \$384.7 million, reflecting the slowdown in the nation's economy during the first six months of 1985. The rate of return on shareholders' equity declined to 11.55 percent from 15.73 percent.

In an effort to assess the impact of the Motor Carrier Act of 1980 on the industry's financial condition, the Commission prepared information which shows, for the years of 1979 through 1984, earnings and traffic volume data for (1) 100 of the largest motor carriers of property, (2) the general freight carrier group (61 carriers) and the specialized commodity carrier group (39 carriers) included

among these 100 carriers; and (3) 100 of the largest motor carriers of general freight. In order to assure the comparability of data, this data base of 100 carriers of property and 100 carriers of general freight consists of the same carriers for each year of the study, 1979 through 1984.

These data indicate that large specialized commodity carriers (haulers of household goods, motor vehicles, liquified petroleum, refrigerated products, building materials, heavy machinery and other specialized products) reported improved earnings in 1984 compared to 1983, while the earnings of the general freight carriers declined in 1984 compared to 1983.

For example:

- Net income of 100 of the largest motor carriers of property (general freight and specialized commodity haulers) rose to about \$450 million in both 1983 and 1984, compared to net income of \$177 million in recession year 1982.
- The composite net income of the 39 specialized commodity carriers included in the 100 property carrier group increased substantially in each of the years 1983 and 1984, while the net income of the 61 general freight carriers rose substantially in 1983, but declined moderately in 1984.
- Net income of 100 of the largest motor carriers of

general freight improved substantially in 1983 compared to 1982; however, net income in 1984 declined compared to 1983.

The general freight carriers did not perform as well as the specialized commodity carriers because they are more subject to the effects of increased competition resulting from deregulation, i.e., freer entry and rate discounting. It is more difficult to establish a special commodity carrier operation because of the higher costs of acquiring equipment and facilities and the more limited scope of available customers (shippers).

The decline in earnings in 1984 shown by 100 of the largest general freight carriers is attributable primarily to the large reduction in earnings by several large carriers and by the general poor operating performance of the smaller carriers in this 100 carrier group (those with revenues ranging between \$25 million and \$45 million). These smaller carriers, whose operations are more regional in scope, are more susceptible to the impact of increased competition.

Mergers and Unifications

Section 21 of the Bus Regulatory Reform Act of 1982 authorized the Commission to exempt from its jurisdiction motor finance transactions involving motor property carriers.¹ Initially, procedures implementing the exemption authority were adopted by the Commission to evaluate, on an individual basis, those motor property

finance transactions proposed for exemption.² Under the initial procedures, the Commission analyzed transactions on a case-by-case basis and exempted from further regulatory review those where the parties demonstrated (1) that regulation of the transaction was not necessary to carry out the national transportation policy in 49 U.S.C. 10101, and (2) that the transaction was either limited in scope or regulation was not necessary to protect shippers from the abuse of market power.³

In view of the competitive and highly unconcentrated structure of the motor property carrier industry, the Commission subsequently adopted rules exempting finance transactions among motor carriers of property, and between such carriers and non-carriers, from the procedural and substantive filing requirements otherwise imposed under 49 U.S.C. 11343, 11344, and 11345(a).⁴ Regulations implementing the class exemption, codified at 49 CFR Part 1186, provide that employees may oppose a transaction proposed for exemption on the basis of adverse employment impact, and any interested party may oppose a transaction on the basis of possible anticompetitive effects.

Although small-carrier transfer of motor property authority technically may not be exempted from prior regulatory review and approval,⁵ the

¹ Procedures: Hearing Exemptions Filed by Motor Carriers, 367 I.C.C. 113 (1982).

² These exemption prerequisites reflect the statutory criteria set forth at 49 U.S.C. 11343(a)(1).

³ 11 CFR Part No. 55 (October 4, 1982) Exemption of Finance Transactions (under 49 U.S.C. 11343) from prior regulatory review (December 11, 1982).

⁴ The regulatory exemption codified at 49 CFR 1186.100 authorizes the Commission to exempt motor

⁵ The motor exemption authority is codified at 49 U.S.C. 11343(a). Finance transactions, mergers, acquisitions and joint venture relationships otherwise subject to the prior regulatory approval of the Commission are defined at 49 U.S.C. 11343(a).



Commission adopted the class exemption rules of 49 CFR Part 1186 as the procedural regulations for approving such transfers.⁶ Use of the less burdensome exemption regulations as guidelines for processing small carrier transfer applications has eliminated a source of procedural delay in such transactions that otherwise would be subject to the more protracted application procedures set forth in 49 U.S.C. Part 1181.

During fiscal year 1985, the Commission processed approximately 182 individual exemption applications, 177 class exemption applications, and 213 small carrier transactions employing the class exemption procedures.

The cumulative effect of the class exemption, continued use of the individual exemption procedures in limited circumstances, and adoption of the class exemption regulations for processing small property carrier transfers has been a significant reduction in regulatory barriers to entry and exit from the industry. The

increased activity produced by the relaxation of regulatory controls has, in turn, produced an environment in which motor property carriers realize reduced operating costs, improved efficiencies, and a heightened level of industry competition. Carriers have demonstrated a clear interest in utilizing the mix of expedited procedures to adjust the focus of their operations, diversify their transportation interests, or improve their market shares and profitability margins.

Exemption or reduced regulation of financial structure activities involving motor property carriers also furthers the national transportation policy goal of intermodalism. Increasingly, mergers and acquisitions are used to produce integrated multi-modal operations and, thus, foster greatly enhanced service coordination.

Availability of exemption and facilitated application procedures for motor property finance transactions has enhanced the prospect that carriers will expand into growth markets beyond those they currently serve. At the same time, the continued opportunity for interested parties to oppose such transactions on anticompetitive grounds preserves an avenue of relief that protects the shipping and consuming public from potential abusive manipulation of market power. To date, use of the exemption procedures has generated minimal concern regarding potential anticompeti-

⁶ 49 CFR Part 1186, subject to the subchapter, 49 U.S.C. 1181-1184. The transfer of operating authority between small motor property carriers is a process with a maximum delay of 30 days, depending upon when the transfer application is filed, and a maximum delay of 30 days while the transfer is being processed by the Commission. 49 U.S.C. 1186 and 1187. The Commission has also adopted the class exemption procedure.

⁷ The Commission (49 CFR 1181) Modification of Small Carrier Transfer Regulations for Transfer of Motor Property Carriers, 50 FR 10,000 (not printed), served February 1, 1985.

⁸ The first exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.100) were not intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.100 (not printed). The second exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.200) are similar to the first, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.200 (not printed). The third exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.300) are similar to the first two, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.300 (not printed). The fourth exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.400) are similar to the first three, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.400 (not printed). The fifth exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.500) are similar to the first four, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.500 (not printed). The sixth exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.600) are similar to the first five, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.600 (not printed). The seventh exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.700) are similar to the first six, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.700 (not printed). The eighth exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.800) are similar to the first seven, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.800 (not printed). The ninth exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.900) are similar to the first eight, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.900 (not printed). The tenth exemption procedures adopted in 49 CFR Part 1186 (Subpart 1186.1000) are similar to the first nine, but they are intended to supersede the regulations for exemption of motor finance transfers. 49 CFR 1186.1000 (not printed).

arrangements that involve motor property carriers and other transportation modes, such as rail or water carriers. See, e.g., Docket No. MC F 16348, Burlington Northern, Inc. Control Exemption—Victory Freightway System, Inc. (not printed), served July 26, 1985; Docket No. MC F 16018, Crown Zellerbach Corporation—Continental, Inc. Control Exemption—Western Transportation Co., Inc. and Pacific Steamship Co., Inc. (not printed), served August 8, 1985.

tive consequences.⁸ Moreover, in the event that a consummated motor finance transaction should produce conditions detrimental to any aspect of the national transportation policy, the Commission retains sufficient power under 49 U.S.C. 11343(e) to revoke an exemption to the extent warranted to address adverse impacts.

Because the Commission's exemption authority and its derivative use of the exemption procedures for small carrier situations are confined to transactions involving property carriers, transfer and financial structure transactions involving other modes must be approved under the Commission's formal application procedures.⁹ During the past fiscal year, the Commission processed approximately seven applications under 49 U.S.C. 11342, as well as 427 small-carrier transfer applications under 49 U.S.C. 10926.¹⁰

Rates

During fiscal year 1985, the Commission instituted a rulemaking proceeding in response to a petition filed by the National Industrial Transportation League (NITL) requesting the adoption of a rule governing the reasonableness of unpublished, negotiated motor common carrier

rates.¹¹ The Commission requested public comment to determine the extent to which motor carriers are attempting to collect undercharges in situations where a lower rate had been agreed to by a carrier and a shipper, but then had not been published by the carrier, and to decide what action, if any, the Commission should take in these situations. The Commission stated that in the event action is necessary, but beyond the scope of the Commission's authority under the Interstate Commerce Act, it is prepared to seek appropriate legislative relief by forwarding its findings and recommendations to Congress.

In response to a petition filed by United Parcel Service (UPS), the Commission proposed to waive the recordkeeping requirements of 49 CFR 1051.1 for shipments of low-value packages.¹² Under this proposal, a shipper could determine which packages have a low value and then either continue to keep detailed shipping records or elect to ship packages as low value under a streamlined record-keeping system. In response to the proposal, the United Parcel Service (UPS) suggested that daily records be required only relative to the total number of low-value packages shipped and the total charges applicable.

The Commission concluded preliminarily that UPS's proposal had merit and had met the goals of the na-

⁸ Fewer than five of the exemption proceedings have included comments regarding potential impact power issues associated with motor transactions.

⁹ Motor motor property transactions under 49 U.S.C. 11342(a)(1)(A) are governed by regulations at 49 CFR 1162.1163. Transfer proceedings and small carrier transactions involving motor other than motor property carriers are governed by regulations at 49 CFR Part 1161.

¹⁰ This figure includes both small motor property carriers processed prior to adoption of the exemption procedures in Ex Parte No. 14, 302 N.M.A. and small carrier transfers involving other motor property carriers.

¹¹ Ex Parte No. 16, 17, National Industrial Transportation League Petition for Rulemaking on Negotiated Motor Common Carrier Rates and Joint Service Packages (1984).

¹² 49 U.S.C. 1051.1(b)(1) requires that in place of the recordkeeping requirements of 49 CFR 1051.1, low-value packages need record keeping only if a shipper



tional transportation policy. The Commission noted that adoption of the proposal would streamline the shipment of packages that have little extrinsic value, reduce administrative costs to both shipper and carrier, and result in more economical, efficient service. Similarly, the proposal would enable UPS to compete more effectively with the U.S. Postal Service's parcel post service, and would provide the shipping public with an alternative service for the movement of low-value packages free of burdensome documentation requirements. Comments were invited from all interested parties.

In another proceeding, the Commission proposed to eliminate its rules at 49 CFR 1312.37(c)(1) requiring domestic carriers to reveal their inland divisions of revenue for international service performed in conjunction with ocean carriers.¹³ The Commission preliminarily concluded that there is no statutory requirement for such a breakout, nor is such information essential to the Commission's regulatory role. It also found that elimination of the requirement would (1) enhance carrier competition and efficiency, (2) reduce paperwork and administrative burdens on carriers and the Commission, (3) bring Commission rules into harmony with the 1984 Shipping Act and Federal Maritime Commission (FMC) rules, and (4) benefit the public through improved pricing and service. However, as a matter of consistency with FMC rules, the Commission is also proposing that the inland division filing

be made optional rather than mandatory, and has temporarily exempted carriers from filing the inland-division breakout pending issuance of a final decision.

The Commission is also considering proposals to eliminate all filing regulations in this area, or to make the joint through-rate filing optional. Although the Commission sees benefits resulting from either approach, it is concerned about possible statutory impediments and has consequently requested comments without proposing specific rule changes.

Finally, the Commission instituted a rulemaking proceeding during the past fiscal year proposing to reduce the notice period for independently filed single-factor, domestic, motor-water property rates.¹⁴ The proposal would allow rate reductions and new rates to become effective on one day's notice, rather than on the 30-day-notice basis currently required for all of such rates. The current notice requirements limit shippers' freedom to choose the most responsive carrier for time-sensitive deliveries and discourage them from testing new services. Reduced notice requirements would lessen these problems, permit shippers to secure transportation services at competitive rates without delay, and allow carriers to meet shippers' changing transportation needs.

Operating Rights

In accordance with the Motor Carrier Act of 1980, the Commission continued to promote competition

¹³ Ex. Parte No. MC 470, International Joint Through Rates Including Ocean Carriers, Revision of Filing Requirements (not printed), served May 26, 1985.

¹⁴ Ex. Parte No. MC 470 (Sub No. 1), Short Notice (Reduced) for Independently Filed Single-Factor Motor-Water Rates (not printed), served May 21, 1985.

and operating efficiency in the motor industry through the relaxation of entry criteria, the revision of decisional standards, and the reduction of service restrictions on motor operations. In pursuit of its goal of promoting competitive and efficient transportation services, the Commission continued to expedite entry into the interstate motor carriage system and to further the expansion of, and efficiency in obtaining, operating rights.

The Commission granted to numerous motor carrier applicants wide-ranging authority to operate as motor common carriers in the transportation of general commodities, with exceptions,¹¹ between all points in the United States (except Alaska and Hawaii).¹² Such grants of authority were predicated upon the demonstration by an applicant that it was fit, willing, and able to provide such transportation; that applicable statutory and administrative requirements would be complied with; and that the authority sought would serve a useful public purpose, and would be responsive to the public demand or need.¹³ Grants of authority were also predicated upon the Commission's not finding that such transportation is inconsistent with the public convenience and necessity.¹⁴

While the Commission's overall policy favors broad nationwide grants

of authority to motor carriers for the transportation of general commodities (with exceptions), the Commission no longer infers that the shipping public has a need for bulk service, or that an applicant can provide it. Direct evidence must be presented which describes the needs of the supporting shippers or other members of the shipping public for the transportation of commodities in bulk, and which shows an applicant's fitness, willingness, and ability to transport bulk commodities.¹⁵

The Commission also granted to numerous motor carrier applicants wide-ranging authority to operate as motor contract carriers for the transportation of a wide range of freight under continuing contract(s) with either "persons" generally (except individuals), or shippers and receivers of designated freight. These grants of authority typically authorize service between all points in the United States. All-encompassing motor contract carrier permits of this type have come to be known as "class" or "industrywide" permits, because they authorize service for an entire class of shippers, or to an entire industry. The Commission granted numerous motor contract carrier applicants class authority to transport general commodities (except Classes A and B explosives and household goods and commodities in bulk).¹⁶ In

¹¹ The commodities typically exempted from such grants are Classes A and B explosives, household goods, and commodities in bulk.

¹² See, e.g., No. MC 161421, *Allen Lumber & Grain Sales, Inc.*, Common Carrier Application (not printed), served May 8, 1985, and No. MC 161357, (Sub No. 2), *Clark, Springer, & Johnson General Commodities*, (not printed), served June 21, 1985.

¹³ See 49 U.S.C. 10622 (b)(1).

¹⁴ See the proviso to 49 U.S.C. 10622(b)(1).

¹⁵ See, e.g., No. MC 160961, *Argonne Granger dba Granger Bros. Trucking*, Common Carrier Application (not printed), served July 3, 1985, No. MC 163031 (Sub No. 1), *Houston Container & Trailer Carrying Company*, Contract Carrier Application (not printed), served July 8, 1985, and *Port News Express Co., Inc.*, Interstate Commerce Commission 3rd Cir. No. 84-2186, decided April 8, 1986.

¹⁶ See, e.g., No. MC 158851 (Sub No. 39), *Greiner Van Lines, Inc.*, Contract Carrier Application (not printed), served January 27, 1985, and No. MC 161181 (Sub No.



addition, the ICC granted contract carriers class authority to transport other commodity groupings in accordance with public needs, thereby enabling motor contract carriers to compete effectively in the changing transportation marketplace.

The Commission continued to enforce statutory protest standards that serve to limit the circumstances under which competing carriers may oppose requests for contract carrier authority.²¹ The Commission also allowed motor contract carriers to convert their permits into certificates, and thereby to become motor common carriers, so that they may increase the efficiency of their operations by serving a wider range of shippers. Eager to allow the private carrier sector of the trucking industry to compete for traffic with for-hire motor carriers, the ICC continued to grant for-hire motor operating authority to private carriers during fiscal year 1985. Those interested in obtaining motor carrier operating authority were allowed to apply for it without supporting-shipper witnesses, so long as evidence of public need for the proposed service was provided.

Lastly, the Commission re-emphasized that it will not permit applicants to offer restrictive amendments to their requests for authority for the purpose of satisfying the interests of their competitors.²²

Relative to exemptions from regulation, the Commission expanded the limits of the New York, New York, commercial zone, within which interstate transportation is exempt from economic regulation, to include Morris County, New Jersey.²³ It has also instituted a proceeding to consider the establishment of a commercial zone embracing four Texas counties adjacent to the boundary between the United States and Mexico,²⁴ and in another proceeding interpreted the statutory agricultural exemption²⁵ to include the transportation of catfish feed.²⁶

The statutory licensing moratorium prohibiting the Commission from issuing certificates or permits to motor carriers domiciled in Mexico, or owned or controlled by persons of that country, remained in effect during the fiscal year, as did the President's lifting of the moratorium with respect to Canadian motor carriers.²⁷ As a result, the Commission continued to observe procedures promulgated for enforcement of the statutory licensing moratorium on Mexican domiciled, owned, or controlled motor carriers.²⁸

Relative to safety considerations, the Commission performed its role in implementing the Motor Carrier Safety Act of 1984 which requires

²¹ *Vanguard Transportation, Inc. Extension—General Commodities—Truck Service* (not printed), served August 28, 1985.

²² No. MC 177894 *BTU Block and Concrete, Inc. Contract Carrier Application* (not printed), served January 8, 1985.

²³ No. MC 125708 (Sub No. 216) *Thunderbird Motor Freight Lines, Inc. Extension—Nationwide General Commodities* (not printed), served May 16, 1985.

²⁴ Ex Parte No. MC 37 (Sub No. 37), *New York, NY Commercial Zone* (not printed), served August 23, 1985.

²⁵ Ex Parte No. MC 37 (Sub No. 38) *Petition to Establish A Commercial Zone of Cameron, Hidalgo, Starr and Willacy Counties, TX* (not printed), served July 26, 1985.

²⁶ 49 U.S.C. 10526(a)(6)(E).

²⁷ No. MC-C-10911 *Indi-Bel, Inc., et al.—Transportation of Catfish Feed—Petition for Declaratory Order* (not printed), served September 5, 1985.

²⁸ 49 U.S.C. § 10922(1).

²⁹ Ex Parte No. 55 (Sub No. 43D) *Certification of Canadian or Mexican Ownership or Control of Applicants for Motor Common or Contract Carrier Authority*, 47 Fed. Reg. 42948 (September 29, 1982).

Mexican motor carriers to hold new certificates of registration to engage in certain otherwise exempt interstate transportation within the United States (i.e., interstate transportation not subject to the statutory moratorium).²⁹ The Commission processed numerous applications filed by Mexican domiciled carriers for this statutorily limited authority throughout the fiscal year.

In an effort to ensure that motor carriers operated in accordance with applicable safety regulations and did not pose a threat to the public safety, the Commission took steps to become more aggressive in its isolation of those motor carriers whose fitness to serve the public was questionable. Applications for authority were dismissed, at the applicants' requests, whenever they failed to demonstrate compliance with the safety regulations of the U.S. Department of Transportation (DOT).³⁰ In other instances, the Commission conditioned the issuance of authority upon an applicant's offer of either evidence of a satisfactory safety rating from the DOT's Bureau of Motor Carrier Safety, or compelling reasons why authority should be issued despite an unsatisfactory rating.³¹ In cases potentially involving more sig-

nificant fitness issues, oral hearings were scheduled to closely examine a carrier's record.³² The Commission also took action to ensure that a carrier determined to have an unfit safety record did not obtain operating authority under the guise of a newly established entity.³³

Household Goods

Significant activity took place in the area of the contract carriage of household goods during fiscal year 1985. As background, near the close of fiscal year 1983, the Commission had recognized the propriety of authorizing contract carriage for broad classes of shippers. Continuing on a path pursued shortly thereafter, the ICC considered numerous applications during the fiscal year for contract carrier authority to transport household goods for the class of shippers defined as persons (except individuals) in 1 U.S.C. 1.

The Commission accordingly granted many applications for contract carrier authority to transport household goods in its recognition that, so long as applicants for operating authority otherwise meet the licensing criteria for contract carriage, industry-wide service designations were appropriate and conducive to national transportation policy goals. In considering many of the applications, the Commission continued to clarify the showing carriers have to make to qualify as contract carriers under the statutory criteria requiring either assignment of equipment for

²⁹ Ex Parte No. 55 (Sub No. 62) Applications for Certificates of Registration for Certain Foreign Carriers 49 Fed. Reg. 20773 (May 17, 1985).

³⁰ See, e.g., No. MC 116725 (Sub No. 35) Land Leasing Inc. DiBIA Indian Valley Enterprises (not printed) served April 25, 1985; and No. MC 111611 (Sub No. 60) Noen Motor Freight, Inc. (not printed) served September 3, 1985.

³¹ See, e.g., No. MC 127799 (Sub No. 16) Luppex Transport Company, Inc. (not printed) served September 16, 1985; No. MC 133327 (Sub No. 7) Melburn Truck Lines (not printed) served August 16, 1985; No. MC 144261 (Sub No. 4) Julius Kolesar, Inc. (not printed) served September 4, 1985; and No. MC 151118 (Sub No. 28) M.D.R. Cartage, Inc. Contract Carrier Application (not printed) served August 14, 1985.

³² No. MC 110328 (Sub No. 24) Roy A. Leight Trucking, Inc. (not printed) served December 27, 1984.

³³ No. MC 150080 (Sub No. 12) Controlled Carriers, Inc. Extension - Nationwide Contract Authority (not printed) served August 16, 1985.



continuing periods, or service designed to meet the distinct needs of contracting shippers.³⁴

Regarding the first alternative test, the Commission emphasized that neither a specific shipper's showing of a need for the dedication of equipment nor a proposal to dedicate specific equipment to a shipper would be required. The Commission noted that the statute requires only that the dedication of equipment actually take place. Giving shippers a preference right to the use of the equipment was found to be sufficient to meet the statutory test.³⁵

Concerning the "distinct needs" test, the Commission continued to recognize that contracting household goods shippers may have a distinct need for contract carrier service. In this regard, the Commission reiterated its belief that whether or not a common carrier might choose to provide some of the same services as a contract carrier to meet the distinct needs of an involved class of shippers does not change those needs into something other than distinct needs.³⁶

During fiscal year 1985, numerous common carriers of household goods, including major carriers that have long served the public, sought and were granted contract carrier

authority to transport household goods nationwide.³⁷ Grants issued to such common carrier applicants furthered the ICC's goal of allowing a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public.

In numerous applications filed during the past fiscal year, carriers sought contract carrier authority to transport both general commodities (with exceptions) and household goods. Many were granted household goods authority based upon separate showings of a public need for the proposed transportation, and on their fitness, willingness, and ability to provide household goods transportation.³⁸ Additionally, many carriers of household goods sought, and were granted, authority to transport furniture and fixtures. A grant of such authority enables carriers to transport a variety of commodities, such as new furniture, that household goods carriers are not normally authorized to handle, and the Commission has recognized in a number of cases that household goods carriers should receive such authority to transport furniture and fixtures.³⁹ Ser-

³⁴ 49 U.S.C. 10102-14 (B).

³⁵ Dockets No. MC 95117 (Sub-No. 2) *Marshall's Moving Service, Inc.* Extension—Household Goods (not printed) served October 31, 1984, and No. MC 145792 (Sub-No. 7) *Grove Storage Company, Inc.* Extension—Industry-Wide Service (not printed) served October 24, 1984.

³⁶ Dockets No. MC 46200 (Sub-No. 6) *All America Moving & Storage Co.* Extension—Household Goods Contract Carrier Service (not printed) served August 5, 1985, and No. MC 109426 (Sub-No. 8) *McColister's Moving & Storage, Inc.* Extension—Household Goods Contract Service (not printed) served December 19, 1984.

³⁷ Dockets No. MC 5428 (Sub-No. 21) *Lyon Van Lines, Inc.* Extension—Household Goods (not printed) served March 6, 1985, No. MC 151878 (Sub-No. 15) *Three Way Corporation* Extension—Nationwide Household Goods (not printed) served March 4, 1985, No. MC 42866 (Sub-No. 28) *National Van Lines, Inc.* Extension—Class of Contract Shippers (not printed) served February 21, 1985, and No. MC 158651 (Sub-No. 39) *Graebel Van Lines, Inc.* Contract Carrier Application (not printed) served January 22, 1985.

³⁸ Dockets No. MC 167181 (Sub-No. 2) *Vanguard Transportation, Inc.* Extension—General Commodities Contract Service (not printed) served August 28, 1985, No. MC 118686 (Sub-No. 53) *Ferrie Transportation, Inc.* Extension—Class of Shippers (not printed) served April 4, 1985, and No. MC 136439 (Sub-No. 6) *M. A. Etelson & Son, Inc.* Extension—Nationwide Contract Carrier Service (not printed) served October 16, 1984.

³⁹ Dockets No. MC 133613 (Sub-No. 2) *Ford Van Lines,*

vice authorizations such as those described above enable carriers to provide a more complete service, to realize better equipment utilization, and to operate more efficiently and economically in furtherance of the national transportation policy.

Numerous applicants for contract carrier authority to serve a class of shippers filed their applications without supporting shipper statements. Many were common carriers of household goods that were experienced in serving shippers and receivers of such commodities. It is the Commission's opinion that there is no legal or policy reason why contract carrier applicants may not act in the capacity of witnesses and file their own supporting statements for class or industry-wide applications.⁴⁰

Complaints received against household goods carriers during fiscal year 1985 declined by about 13.5 percent from those received during the prior fiscal year. Fiscal year 1985 complaint figures closely paralleled those for fiscal year 1983, the year in which the lowest number of complaints were received by the Commission since passage of the Household Goods Transportation Act of 1980.

The Independent Trucker

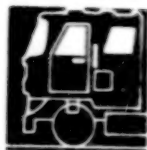
Several Commission proceedings that expanded opportunities for independent truckers were finalized and implemented throughout the past fiscal year. The effect of these actions was to significantly increase the flexibility of owner-operator options, maximize the efficient utilization of equipment, and ease paperwork burdens and other requirements involved in leasing operations.

Of prominent importance to owner-operators was a Commission decision eliminating a requirement that equipment be leased for a minimum duration of 30 days when operated by its owner.⁴¹ Under the ICC's prior regulations, the lease of equipment and drivers by owner-operators to regulated carriers had to be for a minimum period of 30 days. If a carrier did not have sufficient traffic to keep an independent trucker continuously loaded and running during this 30-day period, then the owner-operator was restricted from operating other than through the "permanent" leased carrier. Since owner-operators generate revenues only when transporting freight, their objective is to maintain loaded vehicles at all times, as idle equipment and empty backhauls mean lost opportunities for revenue. Now with the elimination of the 30-day lease requirement, independent truckers are free to lease for shorter periods of time, or to trip lease, in order to fill otherwise non-revenue generating, idle periods with active loaded movements. This recent rule change is a

40. *Extension: Household Goods Contract Service* (not printed), served September 16, 1985, No. MC 183772 (Sub No. 3); *A & D Moving & Storage, Inc. Extension: Contract Carrier Household Goods Service* (not printed), served March 5, 1985, and No. MC 180675 (Sub No. 1); *Coast Moving Systems, Inc. Extension: Contract Household Goods Service* (not printed), served December 18, 1984.

41. *Dockets No. MC 183111 (Sub No. 1), Atlantic Moving Systems, Inc. Contract Carrier Application* (not printed), served August 12, 1985, No. MC 180333 (Sub No. 17); *Northeast Truck Drivers of Texas, Inc. Contract Carrier Application* (not printed), served June 3, 1985, and No. MC 215731 (Sub No. 10); *Samuel A. Van Service, Inc. Extension: Contract Household Goods Service* (not printed), served January 2, 1985.

42. *Ex. Trans. No. MC 81, Docket No. Extension of Trips, Leasing Equipment* (13 MC 81), 1981.



permissive one, in that it allows owner-operators to continue long-term lease arrangements or to experiment with short leases without the minimum time requirement.

A second Commission decision permitted independent truckers and other lessors of equipment to reduce and simplify burdens involved in trip-lease operations.⁴² Former ICC leasing rules required that when a lessor transferred equipment to a lessee on a trip lease, the lessee had to prepare and execute a receipt for the equipment at the transfer point. This meant that the parties to a trip lease, or their agents, had to actually be present at the point of transfer to execute the trip lease, and that specific information concerning that particular trip had to be included. The Commission modified its regulations to allow the use of a master lease covering more than one unit of equipment, and to allow required receipts to be transmitted by mail, telegraph, or other similar means of communication. This streamlines the process of trip leasing and overcomes the difficulty of trip leasing when no agent is present at the transfer point. Opportunities for trip leasing are thus enhanced and productivity and efficiency are improved through reduced instances of dead-heading.

Fiscal year 1985 was the first full year in which owner-operators had the opportunity to take advantage of the Commission's relaxed single-source leasing policy.⁴³ Under this

revised policy, independent truckers and other formerly unauthorized lessors of drivers and equipment may lease to private carriers so long as lease arrangements meet certain minimum criteria. For the first time, owner-operators may haul directly for shippers without fear of violating the Commission's licensing requirements. Because of the potential expansion of owner-operator operations in this new area, the Commission continued its effort to reach and inform the independent truckers of the availability of this service. The Commission made computer-assisted contacts with owner-operator associations and trucking magazines to facilitate the dissemination of thousands of brochures summarizing the ICC's single-source leasing standards and answering the most commonly asked questions concerning private carrier lease arrangements. Staff members responded to an overwhelming number of inquiries from both owner-operators and shippers alike, and counseled various parties on the topics of compliance and participation in the new service.

In response to a petition seeking a revision in the Commission's rules relative to a carrier's responsibility to remove all placards and other identification devices on equipment operated by it, the ICC proposed modifications to its rules to provide for the return of carrier identification signs by the equipment owner in whose control they rest.⁴⁴ The Commission rejected the outright shift in responsi-

⁴² Ex Parte No. MC 43 (Sub-No. 14) (lease and interchange Request - Master Leases), 133 M.C.C. 497, served November 22, 1984.

⁴³ Ex Parte No. MC 122 (Sub-No. 2) (lease of Equipment and Drivers to Private Carriers), 132 M.C.C. 706

(1982), effective April 6, 1984.

⁴⁴ Ex Parte No. MC 43 (Sub-No. 16) (lease and interchange of Vehicles Identification Devices), not posted, served December 17, 1984.

bility from the authorized carrier-lessee to the equipment owner-lessor for the removal of all identification devices upon the termination of a lease, and instead proposed rules permitting a carrier to condition payment to an owner-operator or other equipment lessor upon the return of the identification devices. This proposal alternatively permits the parties to a lease to provide that the owner-lessor, rather than the carrier, shall be responsible for the removal and return of identification devices. Public comments concerning the revised rules were received by the Commission at the close of the fiscal year and a decision will be issued in the near future.

Along with addressing owner-operator concerns through recent rulemaking proceedings, the Commission continued its outreach efforts

to provide independent truckers with accurate, timely, and easy-to-understand information on a daily basis. The past fiscal year saw the Commission's regional offices and its headquarters' Small Business Assistance Office respond to thousands of inquiries made by independent truckers on diverse subjects, written materials on a wide variety of topics were made available upon request, and personal assistance was given to owner-operators seeking their own operating authority. The Commission also continued to assist owner-operators in the resolution of complaints against regulated motor carriers and property brokers. Over 2,700 independent trucker complaints were received and acted upon, and ICC intervention resulted in the collection of almost \$750,000 on behalf of owner-operators.

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BUS COMPANIES

General Financial Condition

Class I intercity bus companies reported a decline in ridership during fiscal year 1985, continuing a trend which began in 1981. The industry is dominated by Greyhound Lines, Inc. and the Trailways System carriers which account for approximately 60 percent and 20 percent, respectively, of the bus industry's total operating revenues. Smaller, regional companies share the remainder of the market.

Commission data for twenty of the nation's largest bus companies for the twelve months ending June 30, 1985, and June 30, 1984, indicated that operating revenues declined almost 1 percent to \$1.1 billion as revenue passengers carried fell 4.2 percent. Net income for all carriers rose \$27 million to \$39 million. Greyhound Lines, Inc. reported a \$46.3 million improvement in net income from the substantially depressed results of the twelve months ending June 30, 1984, when a strike curtailed the company's operations between November 3, 1983, and December 20, 1983. In contrast, the ten Trailways System carriers included among the twenty largest reported a \$16.8 million decline in net income. The composite rate of return for the twenty carriers increased to 7.37 percent from 2.31 percent, because of Greyhound's large earnings recovery from the prior year in which the strike occurred.

To assess the impact of the Bus Regulatory Reform Act of 1982 (Bus Act) on the industry's financial condition, the Commission compared selected financial and operating data of the ten largest bus companies with

fifteen large independent bus companies for the years 1981 through 1984. These data indicate the continuing downward trend of decreased earnings and ridership that the bus industry has been experiencing.

Net income for the ten largest bus companies declined substantially between 1981 and 1983, from \$43 million in 1981, to \$25.3 million in 1982, to \$7.8 million in 1983. Earnings of Greyhound Lines were adversely affected by the 1983 strike. Net income of the ten largest bus companies rose to \$27.8 million in 1984, still considerably below 1981 levels. The net income of the fifteen large independent carriers declined each year from 1981 (\$10.8 million) to 1984 (\$5.2 million).

Revenue passengers carried declined each year for the ten largest bus companies (a total of about 25 percent between 1981 and 1984) and for the fifteen large independent carriers (about 4 percent between 1981 and 1984). Ridership of the ten largest carriers for 1984 declined 3.4 percent from 1983's depressed operating levels resulting from the Greyhound strike.

Although the improvement in the nation's economy and passage of the Bus Act have not arrested the decline in bus industry ridership and earnings, the effects of the recession would have been more severe without the reforms included within the Bus Act. Increased automobile usage, attributed largely to the economic recovery and stable gasoline prices, and some substantially discounted airline fares, also contributed somewhat to the decline in bus ridership.

Rates

During fiscal year 1985, the Commission continued to consider the proposal by the National Bus Traffic Association, Inc., to reduce the length of time required for public notice of general fare increases sought by bus companies.¹¹ Final action should be taken in fiscal year 1986.

Operating Rights

The most significant operating rights issues treated by the Commission during fiscal year 1985 arose in connection with applications for authority to conduct charter and special operations by certain public transit authorities which were recipients of government subsidies to support their local operations.¹² Section 10922(c)(1)(A) of Title 49, United States Code provides for a different standard in deciding applications by such recipients of governmental financial assistance for the purchase or operation of buses. This section states that applications may be denied if the Commission finds, on the basis of evidence presented by any person objecting to the issuance of a certificate, that the transportation to be authorized is not consistent with the public interest. In the *Audubon, Cambria County*, and *Canadian Na-*

tional cases, the Commission found that protestants to the applications had carried their burden of proof by demonstrating that the applicants in question had an unfair competitive advantage stemming from their government funding. The protestants successfully demonstrated that the funding would lead to inefficient use of transportation resources by distorting competitive structures.

Service

In fiscal year 1985, the Commission's field offices processed 130 service complaints from passengers utilizing intercity bus service, a decrease of 35 percent from the level of similar complaints received during each of the two prior fiscal years. Those complaints lodged with the Commission primarily concerned delayed service in relation to published schedules and occasional instances of service failure.

Fifty-one additional complaints received by the Commission during the fiscal year involved rates or charges, and 45 complaints concerned the handling of claims made against carriers. Based on the nature of passenger problems reported to the Commission, it appears that there were no major disruptions in passenger service during the fiscal year, nor were there indications of public dissatisfaction with the result of regulatory reform initiatives implemented under the Bus Act.

During fiscal year 1985, Commission field staff from the Office of Compliance and Consumer Assistance conducted compliance surveys at the headquarters facilities of 28 passenger carriers. Noncompliance

¹¹Ex Parte No. MC 80 (Sub No. 1), *Proposals to Amend Carrier Revenue Proceedings*, Interim, B.U. Industry, No. MC 16873, Massachus. Transit Authority, Common Carrier Application (not printed), served December 12, 1984, as modified by decision (not printed), served March 13, 1985; No. MC 16874, *Audubon Reg. Comm. v. County Services, Inc.*, Common Carrier Application (not printed), served August 23, 1985; No. MC 16915, *Canadian National Railway Company, Common Carrier Application* (not printed), served February 7, 1985; No. MC 16938 *Cambria County Transit Authority, Inc.*, Common Carrier Application (not printed), served September 30, 1985; and No. MC 17461, *Northwest Iowa Community Action Corporation, Common Carrier Application*, (not printed), served January 18, 1986.



of a minor nature was discovered in 25 of the surveys, and was informally handled with carriers for correction. No violations were found in two surveys, and only one survey required an assignment for further investigation.

The past fiscal year also saw the continuation of a program of bus inspections at tourist-type attractions to identify compliance with the ICC's operating and insurance regulations. Where violations were found, appropriate action was taken to correct irregularities discovered.

Of major concern to all motor passenger carriers during the year were the difficulties experienced in obtaining and maintaining minimum required levels of insurance coverage or other financial security for the protection of the public or for continued operations.

The greatly increased cost of bodily injury and property damage liability insurance was a major problem for the bus industry in fiscal year 1985. In addition to cost increases, some insurance companies totally withdrew from the market while others began to underwrite more selectively. The increased cost and reduced availability of coverage caused many bus lines to operate with little opportunity for profit and in some instances, to cease operations altogether. Though the increased limits of liability coverage required since November 19, 1983, by the Bus Act may have exacerbated the insurance problem, the Commission did not

view those statutory limits as the primary cause.

Under the Bus Act, the Secretary of Transportation was required to establish minimum levels of passenger carrier financial responsibility, and these were established at \$5 million for any vehicle with a seating capacity of 16 passengers or more. The Secretary could, and did, reduce this amount to no less than \$2.5 million for a two-year period beginning on November 19, 1983. For any vehicle with a seating capacity of 15 passengers or fewer, the minimum level was set at \$1.5 million. The Secretary reduced this amount to \$750,000 for the same two-year period. Nonetheless, the lower limits established reflected a significant increase from the previous minimum limits established by the Commission and the Department of Transportation. Under the terms of the Bus Act, the new minimum limits became the minimum insurance requirements that had to be met for a carrier to conduct intercity bus passenger transportation.

Throughout the fiscal year, the Commission's field staff devoted considerable attention and effort to bringing passenger carriers and commuter van operators into compliance with ICC's insurance requirements. Voluntary compliance was obtained in most instances, however, temporary restraining orders and permanent injunctions were also utilized in this compliance effort. (See "Enforcement," p. 78)

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FREIGHT FORWARDERS AND WATER CARRIERS

Freight Forwarders

During fiscal year 1985, the Interstate Commerce Commission continued to adhere to the rule that new or additional freight forwarder authority may be granted, even though existing service is adequate, wherever such authority is supported by a public-interest factor of equal or dominant importance to the grant. In addition to the adequacy of existing service, other elements considered by the Commission in granting authority may include the desirability of competition, of improved service, and of different types of service. The Commission's grants of freight forwarder authority during the past fiscal year consisted not only of broad grants concerning general commodities (with exceptions) between all points within the United States, but also of limited grants when the public record indicated a more limited service need.

Legislation was introduced which was designed to deregulate the freight forwarder industry. This legislation would eliminate the Commission's regulatory control of the forwarder industry, with the exception of household goods, and would place freight forwarders in a more competitive footing with other freight intermediaries.

Water Carriers

Recognizing the importance of increased competition in the surface transportation industry, the Commission continued to process water carrier applications during the past fiscal year with a view toward increasing competition.

The Commission has recognized and sought to encourage the provision of innovative services, such as "floating warehouses," to enable water carriers to be competitive with rail service, and has also authorized the provision of dual operations (both common and contract carrier service) by water carriers.⁴

¹See I.C.C. Sub No. 1, "Multi-Modal Forwarding Service," and public notice, served June 27, 1985, and No. 1, "FF 8710, 47th Forwarders, Inc.," and public notice, served June 12, 1985.

²See I.C.C. 1, "American International Moving, Inc.," and public notice, served May 29, 1985, and I.C.C. 1, "J.P. Management Corporation," and public notice, served May 2, 1985.

³S. 1, 98, "The Surface Freight Forwarder Deregulation Act of 1985," passed by the Senate on October 20, November 4, 1985, and H.R. 3333, "Freight Forwarding, the Department of Transportation.

⁴No. 10, 420, Sub No. 1, "Knapville Corporation," and carrier application and public notice, served May 1985.

INTERMODAL TRANSPORTATION

The Commission continued to promote the growth of intermodal transportation during fiscal year 1985. For example, the Commission approved the acquisition of North American Van Lines, Inc. by Norfolk Southern Corporation,¹ a consolidation which represented the first application of the Commission's liberalized rail-motor acquisition standards. In reaching its decision the Commission concluded that the transaction would cause no significant anti-competitive impacts and would result in substantial public benefits.

The Commission's Office of Transportation Analysis also completed a study, entitled *Railroad TOFC/COFC Monitoring Study*, which examined the impacts of the exemption of TOFC/COFC service provided by railroads. Though the exemption was granted in 1981, the study was prepared in response to the Commission's statement in its decision at that time that the results of the exemption would be monitored.⁵ The study, issued only as information by the Office of Transportation Analysis, concludes that favorable rates have been the principal factor in the marked increase in TOFC/COFC traffic since the exemption became effective. Further increases in this traffic will be dependent on marketing and technological developments currently taking place with great rapidity. These developments will have a direct bearing on profit margins, service improvements, and the size of capital investment in facilities and equipment in the near future. Finally, based on a survey of TOFC/COFC users, the study finds that contract rates are used by nearly 70 percent of the shippers and that rates have not fluctuated as widely or as quickly as was anticipated prior to deregulation of the service.

during the last fiscal year. This simple and inexpensive process permitted the settlement of most disputes without the need of the ICC's institution of time-consuming and costly formal procedures.

Every person or group, from large corporations to small consumers, has an opportunity to take part in the informal rate-settlement process and each receives the same expert assistance that is provided by staff to the Commission itself in formal matters. A further public gain from informal settlements is the dissemination of a knowledge of pertinent law, of tariffs, and of each party's rights in order to prevent the future occurrence of similar disputes. While the Commission does not record the total dollar amount involved in the rate and tariff controversies which it attempts to resolve, letters written to the Commission in appreciation of its dispute-resolution efforts reveal that more than \$71,000 was recovered in 102 individual cases.

The Commission's special-docket procedure permits rail and water carriers to seek authority to refund overcharges or to waive the collection of undercharges. During fiscal year 1985, a total of 528 special-docket applications were processed that authorized total reparations and waivers amounting to \$10,346,114.

Through the Commission's informal complaint proceedings, shippers by rail or water may prevent expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and by fully describing the nature of their complaints. If the carrier in question agrees that a particular

movement involves overcharges or unreasonable charges to a shipper, refunds or waivers may be made without the need for formal procedures. The ICC processed 35 such applications on the informal complaint docket during fiscal year 1985.

Household goods carriers and freight forwarders are required to seek authority from the Commission prior to the publication of any "released rates" based on a limitation of the carriers' liability for shipper property. During the past fiscal year, the Commission's Released Rates Board acted on two applications for such authority.

Suspension/Special Permission Board

In January 1985, the Commission merged two employee boards, the Suspension Board and the Special Permission Board, that deal with tariff matters. This action was taken in response to the reduced activity levels of both boards as a result of legislative changes and major revisions to regulations dealing with the publication of carrier tariffs.

New, increased, or reduced rates and charges for the interstate service provided by the nation's rail, motor, freight forwarder, and domestic water carrier industries are filed with the Commission and the public in tariff form, generally on less than 30 days' notice.⁴ Upon the request of interested parties opposing proposed tar-

⁴The Staggers Rail Act (P.L. 98-367) amended 49 U.S.C. 10705(c) to permit rail carriers to file new or increased rates on generally not less than 20 days' notice, and rate reductions on not less than 10 days' notice. Motor property carriers and freight forwarders are authorized by 49 U.S.C. 1123(a) to file independently published new or increased rates on less than 5 days' and requested rates on seven working days' notice.

iff changes, the proposals are considered for possible investigation and suspension by the Commission's Suspension/Special Permission Board, or by the entire Commission. Decisions of the Board are subject to reconsideration by a division of the Commission.

During fiscal year 1985, approximately 1,499,511 tariffs were filed with the Commission and 72 of these were protested (.005 percent). Of these proposals, six were suspended, 50 were permitted to become effective, three were allowed to go into effect but were investigated, and 13 were either cancelled by the proposing company, had their protests withdrawn, or were rejected by the Commission.

Among the proposals considered by the entire Commission were 20 general increases or restructurings of motor common carrier rates and charges filed by regional motor carrier bureaus.⁵

There were five unprotested rate proposals considered by the Board on its own initiative. All were permitted to become effective.

Of the 20,913 rail contracts filed with the Commission, the Board dealt with five petitions and complaints requesting discovery of the essential terms of rail contracts. Three petitions for discovery were granted, while two were denied.

The Board also considered approximately 2,724 applications requesting relief from various tariff-filing requirements of 49 C.F.R. 1312. Of the applications considered, 2,059 were granted; 23 were denied; 429 were either granted or denied in part, and 213 were withdrawn by the applicant before being considered. As a result of the Commission's modification of procedural rules to encourage carrier innovation, as well as tariff simplification,⁶ applications for fiscal year 1985 represented a considerable decline over the 9,070 applications received in fiscal year 1984.

⁵ Central & Southern, Central States, Eastern Central, Middle Atlantic, Midwest, New England, Pacific, Inland, Rocky Mountain, Southern Motor and Niagara Frontier.

⁶ No. 37321, *Revision of Tariff Regulations, All Carriers* (not printed), decided September 24, 1984, served October 1, 1984.

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ENFORCEMENT

Throughout fiscal year 1985, the Commission's enforcement program sought to ensure compliance with interstate transportation laws by means of various enforcement efforts specifically focused on (1) violations that had anti-competitive effects (2) unlawful activities that harmed consumers and small businesses (3) activities that constituted consumer fraud and (4) operations by unsafe or uninsured carriers.

During the past fiscal year, a total of \$1.4 million was assessed in criminal fines, civil contempt penalties, and civil forfeitures. In addition, numerous injunctions and consent agreements were obtained which ensure future compliance with the Interstate Commerce Act.

In all of these efforts, the Commission directed its enforcement activities toward the dual goals of effectively enforcing the law while simultaneously promoting the goals of the Motor Carrier Act of 1980, the Household Goods Transportation Act of 1980, the Staggers Rail Act of 1980, and the Bus Regulatory Reform Act of 1982.

Highlights of the Commission's enforcement efforts during fiscal year 1985 are as follows:

Anticompetitive Practices

Proceedings involving anticompetitive practices included violations of the nation's antitrust laws. In May 1985, an injunction was obtained against the Rocky Mountain Motor Tariff Bureau (RMMTB) which prohibited certain unlawful trade practices. Under the terms of the injunction

which was consented to by RMMTB, all rates on exempt commodities were to be purged from its tariffs and the RMMTB was restrained from taking any further action to establish rates on those commodities.

The RMMTB is a tariff bureau composed of several hundred trucking companies that establishes rates for its members' interstate transportation services. By statute, such rate setting by collective action of companies is immune from antitrust laws where the rates relate to transportation regulated by the ICC. In this case, however, the RMMTB established rates on commodities that were exempt from regulation. Thus, it was alleged that the collective rates set by the RMMTB and its members were not immune from pertinent laws and constituted an unlawful restraint of trade in violation of the Sherman Antitrust Act.

Other anticompetitive practices include the payment of "kickbacks." Kickbacks occur when carrier officials will "kick back" a portion of transportation freight charges to a shipper's employees for purposes of obtaining that shipper's business. This activity is considered anticompetitive because shipper choices are based on considerations other than efficiency.

In one illegal kickback case, D&B Transportation, Inc., paid a civil forfeiture of \$3,500. A Commission field investigation revealed that D&B was co-owned by a dispatcher for Great Coastal Carriers, Inc., of Laurel, Delaware and an employee of Consolidated Thermoplastics. D&B had received payments totalling over \$1,100 from Great Coastal and had

disbursed the money to the Consolidated employee for the purpose of obtaining Consolidated's traffic for Great Coastal. In addition to its involvement in paying and receiving kickbacks, it was ascertained that D&B had conducted extensive operations as a property broker without an ICC broker's license and without a surety bond in effect, as required by the Interstate Commerce Act and ICC regulations.

Consumer and Small Business Protection

Included under this heading are cases involving household goods carriers, owner-operators, and passenger carriers.

In the household goods area, Gary Curtis Moving Service, Inc. of Philadelphia, Pennsylvania, and Southgate, California, was ordered to assume property liability for claims for loss and damage to household goods transported by the company, and to acknowledge and otherwise process claims in accordance with Commission regulation. These regulations require trucking companies to acknowledge loss and damage claims within 30 days of receipt and to pay, decline to pay, or otherwise settle such claims within 120 days of receipt, or else periodically advise the claimant of the status of claims and the reason for any delays in final claim disposition. Several shippers of household goods had complained to the ICC that Curtis had refused to take any action on their loss and damage claims for several months

and, in some cases, more than a year, after written claims were filed with the company. United States District Judge Marvin Katz of the Eastern District of Pennsylvania issued the permanent injunction order against Curtis after Curtis failed to answer or otherwise defend against the ICC's complaint for injunctive relief.

In its efforts to ensure fair and lawful treatment of owner-operators, the Commission completed action on a number of cases. In one case, an injunction was entered against Lott Motor Lines, Inc. of Moravia, New York, requiring payment due to its owner-operators.¹ Pertinent ICC regulations require payment within 15 days after owner-operator submission of necessary delivery documents to the hiring company. The complaint for injunction was based upon an investigation which revealed that Lott had continually failed to pay its owner-operators in a timely manner. Lott had been warned about its failure to pay in June, 1984, however, a March 1985 investigation conducted by the Commission revealed that the company was continuing in its failure to comply with regulations.

The injunction in this case was issued by U.S. District Judge Howard J. Munson of the U.S. District Court for the Northern District of New York in Syracuse on June 28, 1985, and required Lott's compliance with ICC regulations, payment of all money due owner-operators within six months, time at a specified monthly rate, and a biweekly reporting re-

¹ See *ICC v. Lott Motor Lines, Inc.*, 1985 WL 10000 (E.D.N.Y. 1985).

² See *ICC v. Lott Motor Lines, Inc.*, 1985 WL 10000 (E.D.N.Y. 1985).

sponsibility to the ICC's Boston regional office.

During fiscal year 1985, an injunction was obtained against a major household goods carrier to cure certain owner-operator problems.⁴ The injunction prohibits the Aero-Mayflower Transit Co. from using lease agreements which do not conform with the content provisions of ICC regulations, and also requires Aero-Mayflower to adhere to the terms of those lease agreements.

On December 13, 1984, T. Del Farno Trucking Co., of Pawtucket, Rhode Island, was enjoined from violating the Commission's leasing regulations.⁵ A permanent injunction obtained in this proceeding prohibits T. Del Farno from continuing to violate rules which require motor carriers to compensate owner-operators who are under lease to them within 15 days after the owner-operators submit necessary paperwork for each trip completed.

In other cases concerning the ICC's leasing regulations, an injunction was entered against the Interstate Contract Carrier Corp., an ICC-licensed motor carrier headquartered in Salt Lake City, Utah,⁶ and Polar Transport, Inc., of Hanover, Massachusetts, signed a consent agreement requiring that it cease and desist from violations of the Commission's leasing regulations.

To protect the traveling public from unauthorized bus operators not in compliance with minimum insurance

requirements, the Commission took several enforcement actions in fiscal year 1985.

For example, a number of actions were taken against carriers transporting passenger commuters in vans into New York City from northern New Jersey. The Commission obtained a permanent injunction against an individual doing business as Royal Limousine Service, of Union City, New Jersey, in an order issued by U.S. District Judge Frederick B. Lacey, of the U.S. District Court for the District of New Jersey (Newark).⁷ The individual operating the van was enjoined from transporting passengers in interstate commerce between points in northern New Jersey and New York City without first obtaining the appropriate authority from the Commission and providing proof of the necessary and required insurance coverage.

In addition, a temporary restraining order was obtained against an individual bus operator who was enjoined from transporting passengers in interstate commerce, between points in northern New Jersey and New York City, without the appropriate ICC authority and without proper insurance coverage for the protection of the public.⁸

The Commission also discovered rather extensive unauthorized transportation of passengers between Chicago, Illinois, and Laredo, Texas. Transportes Hispanos, Inc., of Chicago, and its owners were permanently enjoined from engaging in

⁴ 117 F.2d 100, Aero-Mayflower Transit Co., Inc., No. 84-1246, 15-21, 10d, April 29, 1985.

⁵ 117 F.2d 100, T. Del Farno Trucking Co., Inc., No. 84-1246, 15-21, 10d, December 13, 1984.

⁶ 117 F.2d 100, Interstate Contract Carrier Corp., No. 84-1246, 15-21, 10d, November 20, 1984.

⁷ 117 F.2d 100, Royal Limousine Service, Inc., No. 84-1246, 15-21, 10d, April 10, 1985.

⁸ 117 F.2d 100, Royal Limousine Service, Inc., No. 84-1246, 15-21, 10d, April 10, 1985.

interstate commerce without Commission operating authority and without having proper public liability insurance in effect and on file as required by federal law.¹⁰ A permanent injunction went into effect by consent of the parties as approved and ordered on January 30, 1985, by Judge William T. Hart of the United States District Court for the Northern District of Illinois in Chicago.

In another proceeding, McCarthy Flowered Cabs Inc. of Williamsport, Pa., agreed to pay the Commission \$6,000 in settlement of a civil forfeiture claim. The claim arose from an ICC investigation which revealed that McCarthy had transported passengers in vans between Williamsport and points in New York State without proper authority despite the fact that the ICC had warned McCarthy that such operations required a certificate or permit. The investigation also disclosed that McCarthy had increased its insurance coverage to an acceptable level and obtained the necessary authorization once it had been notified of the Commission's civil claim.

Fraudulent Activity

The ICC concluded a large number of cases concerning carriers that had failed or had refused to properly refund overcharges or duplicate payments, had improperly handled other claims, or had engaged in other fraudulent activities.

In a major case, Ryder/PIE Nationwide Inc. of Jacksonville, Florida (formerly Ryder Truck Lines, Inc.) agreed to pay a civil forfeiture pen-

alty of \$1 million for violations of the Elkins Act, and to make restitution of at least \$4 million to customers who used its services between February 1979 and July 1983. The settlement provided that, to the extent the refunding of the duplicate payments and overcharges did not reach \$4 million, the difference would be paid to the government as an additional civil forfeiture penalty.¹¹

In addition, Ryder/PIE Nationwide entered a guilty plea in the U.S. District Court in Jacksonville to an information charging the trucking company with unlawful discrimination in violation of the Elkins Act.¹² The information charged that from February 1979 to July 1983, Ryder/PIE had knowingly granted and solicited, accepted, or received duplicate transportation services payment by practicing discrimination among its customers. The carrier's fine of \$20,000 was suspended and it was placed on probation for 19 months.

In a separate proceeding, Ideal Truck Lines, Inc. of Norton, Kansas, agreed to the terms of a consent decree entered by Judge Dale E. Saffels of the U.S. District Court at Wichita, Kansas.¹³ In this case, the Commission had charged the motor carrier with failing to process loss and damage claims, overcharge claims, and unidentified payments paid by commercial shippers within the time limits prescribed by federal regulations. The Commission's loss-and-damage regulations are de-

¹⁰ 49 U.S.C. § 10901(a)(1)(A)(i)-(iii).

¹¹ 49 U.S.C. § 10902(a)(1)(A)(i)-(iii).

¹² 49 U.S.C. § 10902(a)(1)(A)(i)-(iii).

¹³ 49 U.S.C. § 10902(a)(1)(A)(i)-(iii).

signed to protect the shipping public by establishing maximum time limits within which trucking companies must identify or acknowledge customer claims, and then either pay, decline to pay, or make reasonable settlement offers in satisfaction of the claims. Companies that fail to process customer claims in a timely fashion are subject to Commission enforcement action.

An injunction was also entered against Motor Express Inc. of Indiana, a Chicago, Illinois-based trucking company, prohibiting it from violating the Commission's duplicate-payment regulations.¹¹ These regulations require that when a company discovers that the same freight charges have been paid twice, it must automatically refund the second payment within 30 days. A Commission investigation had revealed that Motor Express was not refunding duplicate payments within 30 days of discovery, and a permanent injunction was later entered by Judge Susan Getzendanner of the United States District Court for the Northern District of Illinois, Eastern Division. Judge Getzendanner's order required Motor Express to refund duplicate payments within 30 days of discovery, and to account for and refund outstanding duplicate payments.

Consent agreements were signed last fiscal year by Lenzner Coach Lines, Inc. doing business as North Burrough Cab. of Sewickley, Pa., which had been overcharging and undercharging its customers, and Munson Transportation, Inc., of

Monmouth, Ill., which had failed to comply with ICC regulations regarding the processing and disposition of overcharge claims. In the latter case, Munson was found not to have (1) created a separate file for each claim, nor to have assigned a claim number to each which noted the date of receipt of the claim and acknowledgement of its receipt in writing within 30 days after the date of receipt, (2) paid, declined to pay, or settled overcharge claims within 60 days of their receipt, and, (3) entered into written extension agreements with claimants when overcharge claims were not paid, declined, or settled within 60 days. By the terms of a consent agreement, Munson agreed that it would employ the required procedures in its future handling and disposition of overcharge claims.

Fiscal year 1985 also saw Commission investigators uncover widespread overcharges by motor carriers in the Puget Sound area of the State of Washington. As a result, consent agreements were obtained by Delta Lines, Inc., of Oakland, Calif., and Renton Issaquah Auto Freight, Inc., of Renton, Wash. The agreements required the carriers to comply with ICC regulations pertaining to the handling of overcharge claims filed by shippers.

On October 1, 1984, System 99, a trucking firm in Oakland, Calif., paid \$100,000 in civil penalties to the Commission. A court injunction previously had been obtained which required System 99 to initiate a program to properly scrutinize future freight-charge collections so that all overcharges and duplicate payments

¹¹ 48 MTRC Executive No. 10 of 1984, 10 MTRC 10 (Oct. 1, 1984), 10 MTRC 10 (May 22, 1985).

could be identified and returned to shippers.¹⁴ United States District Court Judge Thelton E. Henderson also directed System 99 to refund all then-identifiable overcharges and duplicate payments to its shippers under a court-ordered refund schedule.

In three related criminal cases, three individuals plead guilty and were convicted of various crimes as a result of Commission investigations.¹⁵ One individual was convicted of a violation of the law in corruptly influencing an application proceeding before the Commission by paying bribes to shipping company traffic managers to obtain the shippers' support for certain applications. Two other persons were convicted of Elkins Act violations for a kickback scheme involving motor carrier traffic.

Unsafe or Uninsured Operations

During the fiscal year, the Commission's enforcement staff cross-checked applications for operating authority against the Department of Transportation's computerized safety rating file to identify those carriers which had "Unsatisfactory" or "Conditional" safety ratings. Information concerning those applicants having such safety ratings was brought to the Commission's attention for consideration of the applicants' safety fitness in the disposition of pertinent applications.

The Commission's insurance enforcement program encompasses a

variety of tools to remedy violations, the most common being consent agreements to obtain compliance. These agreements normally require a carrier to obtain whatever insurance coverage is lacking, and also prohibit operations by a carrier during the time it has no insurance. During fiscal year 1985, the Commission obtained 591 consent agreements of this type.

The Commission also seeks penalties and injunctions whenever appropriate. An injunction was entered against A&J Trucking, Inc. of Cedar Rapids, Iowa.¹⁶ That injunction prohibited A&J from operating in interstate commerce unless it has appropriate cargo and public liability insurance in effect. This was the second instance in which A&J had been found in violation of ICC insurance regulations. During a Commission investigation in 1984, a consent agreement had been executed whereby A&J had agreed not to operate until it had appropriate insurance in effect and evidence of such insurance on file with the Commission. The injunction imposed on A&J was based on the firm's failure to comply with the original consent agreement.

Eastern Transport Co., Inc., of Lanham, Maryland, was ordered by a Federal District Judge to cease all operations in interstate commerce until it filed proper evidence of the possession of bodily injury and property damage insurance coverage.¹⁷ On November 23, 1984, Eastern had

¹⁴ *ICC v. System 99, Inc.* No. C-84-501A TEH (N.D. Cal. Sept. 5, 1984).

¹⁵ *United States v. Richard M. Godfrey*, No. CR-85-77W (D. Utah, April 16, 1985); *United States v. Larry A. George*, No. CR-85-76W (D. Utah, April 19, 1985); and *United States v. Joel C. Kidd*, No. CR-85-80W (D. Utah, April 17, 1985).

¹⁶ *ICC v. A&J Trucking, Inc.* Civ. No. 85-111 (N.D. Iowa, June 14, 1985).

¹⁷ *ICC v. Eastern Transport Co., Inc.* Civ. No. 84-3548 (D.D.C. November 30, 1984).

signed a consent order which permanently enjoined it from conducting unauthorized and uninsured passenger operations. Although Eastern had been granted an ICC certificate in September 1984, and had transported charter groups between and among points in Washington, D.C., suburban Maryland, and the eastern United States, it had failed to comply with certain conditions necessary for

its certificate to take effect, especially those relative to insurance coverage.

In another case, an injunction was also entered against Robinson Charter Lines, of San Francisco, Calif., forbidding the transportation of passengers without proper evidence of bodily injury and property damage insurance coverage being filed with the Commission.¹⁸

¹⁸ *I.C.C. v. Ollie Robinson, d/b/a Robinson Charter Lines*, C-84-7989-WWS (N.D. Cal. December 21, 1984).

COURT ACTIONS

The Commission's litigation during the past fiscal year built on and refined many of the ICC's and the courts' initial interpretations and applications of the Motor Carrier Act of 1980, the Staggers Rail Act of 1980, and the Bus Regulatory Reform Act of 1982. Recent court decisions addressing these relatively new and comprehensive amendments to the Interstate Commerce Act have substantially defined and molded the Commission's permissible regulation of the various modes of interstate transportation. This, in turn, has had a significant impact on the operations of the nation's interstate surface transportation industries.

During fiscal year 1985, the Office of the General Counsel (OGC) handled 72 cases in the Federal courts. Of these, 519 were pending at the beginning of the fiscal year and 208 additional cases were instituted during the year. As of September 30, 1985, the courts had concluded 217 cases while 510 were pending in various stages of litigation. Of the cases concluded, 9 were done so by the Supreme Court, 194 by federal courts of appeals, and 14 by federal district courts. The more significant decisions are discussed below.

The Motor Carrier Act continued to engender litigation throughout the past fiscal year. For example, the United States Court of Appeals for the Fifth Circuit affirmed in part and

invalidated in part motor carrier licensing rules¹ promulgated by the Commission to replace those previously invalidated by the Court.² The Court affirmed the replacement rules insofar as their limitations on routine restrictions on grants of general commodities authority for the transportation of Classes A & B explosives, household goods, and commodities in bulk. It also affirmed the rules to the extent of their authorization of broad territorial and commodity descriptions for motor carrier applicants seeking otherwise restrictive, "fitness-only" authority. The Court invalidated replacement rules to the extent that they (1) automatically granted 50-state authority to every motor contract carrier applicant whether or not it requested or showed a need for such territorially broad authority, (2) failed routinely to restrict specific (as opposed to general) commodity grants against transportation in bulk without a specific showing of carrier fitness and public need, and, (3) required an undue evidentiary burden on applicants to justify the reasonableness of commodity descriptions tailored by themselves.

In the realm of motor carrier ratemaking, the District of Columbia Circuit affirmed the Commission in two significant rulemakings. First, the Court upheld the Commission's pro-

[NOC] also represented the agency in litigation involving a variety of non-regulatory matters, such as: Equal Employment Opportunity, employee grievance, contract matters, and Federal civil administration. All of these matters, as these matters have no direct impact on the development of transportation regulations, are not within the purview of this publication. These are not separately discussed herein.

¹ American Trucking Association v. ICC, 778 F.2d 1001, 1002 (5th Cir. 1985).

² 778 F.2d 1001.

³ Ex Parte No. 14, Sub No. 15A, A. Applicable Form of Request for Operating Authority, Motor Carrier and Owners of Property, Ex Parte No. MC 142 (Sub No. 1) (Division of Regulatory and Enforcement of Motor Carriers of Property).

⁴ American Trucking Association, Inc. v. ICC, 778 F.2d 1001, 1002 (5th Cir. 1985). 87A-15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

mulgation of rules exempting motor contract carriers from the tariff-filing requirements of the Motor Carrier Act.¹⁰ Second, the Court affirmed the Commission's revision and simplification of the National Motor Freight Classification (NMFC).¹¹ The NMFC is the system under which commodities are classified according to their relative transportation characteristics for the determination of applicable rates. As affirmed by the D.C. Circuit in the classification case, the Commission simplified the NMFC by condensing the number of transportation characteristics used in making any classification from fifteen to four—density, stowability, handling, and liability.

Last fiscal year, rail transportation-related litigation embraced a wide array of issues under several different statutes. Significant litigation occurred in various phases of the Milwaukee Railroad bankruptcy/acquisition cases. The United States Court of Appeals for the Seventh Circuit affirmed the Milwaukee Reorganization Court's decision adopting the Commission's interpretation of the Milwaukee Railroad Restructuring Act (MRRRA) to mean that the sale of the Milwaukee core lines may be authorized.¹² The Seventh Circuit also affirmed a lower court's decision authorizing the Soo Line Railroad to file

an application with the Commission relative to this issue.

Additionally, the United States District Court for the Northern District of Illinois (Reorganization Court)¹³ affirmed the Commission's decision¹⁴ that found that the sale of the Milwaukee core to the Soo Line was in the public interest and preferable to the competing application of the Chicago and North Western Transportation Company, and that neither the sale to the Grand Trunk Corporation nor reorganization of the Milwaukee on a stand-alone basis, as proposed by the Chicago Milwaukee Corporation, was in the public interest. The Reorganization Court authorized the Trustee in this proceeding to consummate the sale to Soo and the Trustee accomplished the transfer on February 19, 1985. A number of appeals from the Reorganization Court's order and petitions for review of the Commission's decisions are pending before the Seventh Circuit.

The Staggers Act was also the subject of a number of significant court decisions last fiscal year. The District of Columbia Circuit affirmed a Commission decision under 49 U.S.C. 10505(a) exempting a non-carrier feeder line operator from Commission regulations with respect to its acquisition and operation of a 22.21-mile abandoned rail branch line of the Norfolk and Western Railway Company. The Court upheld the

10. *Transit Union of America v. National Motor Freight Classification*, 788 F.2d 1111 (D.C. Cir., 1986).

11. *Commission on Motor Freight Classification v. National Motor Freight Classification*, 788 F.2d 1111 (D.C. Cir., 1986).

12. *Milwaukee Railroad Restructuring Act*, 49 U.S.C. § 10505(a).

13. *Chicago and North Western Transportation Company v. Milwaukee Railroad*, 788 F.2d 1111 (D.C. Cir., 1986).

14. *Chicago and North Western Transportation Company v. Milwaukee Railroad*, 788 F.2d 1111 (D.C. Cir., 1986).

15. *Chicago and North Western Transportation Company v. Milwaukee Railroad*, 788 F.2d 1111 (D.C. Cir., 1986).

16. *Chicago and North Western Transportation Company v. Milwaukee Railroad*, 788 F.2d 1111 (D.C. Cir., 1986).

17. *Chicago and North Western Transportation Company v. Milwaukee Railroad*, 788 F.2d 1111 (D.C. Cir., 1986).

18. *Chicago and North Western Transportation Company v. Milwaukee Railroad*, 788 F.2d 1111 (D.C. Cir., 1986).

Commission's determination that the line could be operated without imposition of labor-protective conditions.

The Seventh Circuit also affirmed two Commission determinations not to impose labor-protective conditions on new owners of abandoned (or abandonable) rail lines. In one case (*Simmons I*),¹¹ decided in March 1985, the Court upheld the Commission's decision not to impose labor-protective conditions on a voluntary sale of a 17.5-mile line of the Illinois Central Gulf Railroad under 49 U.S.C. 10905. The Seventh Circuit reasoned that imposition of labor-protective conditions on such lines would deter the very sales of abandonable lines that Section 10905 was intended to foster. In another case (*Simmons II*),¹² decided in July 1985, the Seventh Circuit cited its previous holding in *Simmons I* and held that the Commission properly did not impose labor-protective conditions in a Section 10905 forced sale of an Illinois Central Gulf Railroad segment of line.

In the labor area, a divided panel of the District of Columbia Circuit¹³ vacated two Commission decisions that exempted under 49 U.S.C. 11341(a) the Union Pacific/Missouri Pacific/Western Pacific rail consolidation from the Railway Labor Act. The Court's majority held that the Commission made insufficient findings to demonstrate that the exemption was necessary. The Commission currently

is seeking Supreme Court review of the Court's decision.

The District of Columbia Circuit issued two significant decisions concerning Commission regulation of intrastate rail rates according to 49 U.S.C. 11501(c).¹⁴ They affirmed Commission orders pre-empting the establishment of certain intrastate rail rates by the Indiana and the Utah Public Service Commissions.¹⁵ The D. C. Circuit's decisions indicate support for a broad interpretation of the Commission's authority in the review of state decisions under Section 11501(c).

Forceful statements by the D. C. Circuit in its *Public Service Company of Indiana* decision regarding the Indiana Public Service Commission's violations of both the "letter and spirit" of the Staggers Act should prove to be particularly helpful to the Commission in its efforts to protect against what that court called "narrow, parochial protectionism."¹⁶

With regard to Commission regulation of rail ratemaking under the Staggers Act, the United States Court of Appeals for the Second Circuit¹⁷ affirmed a Commission decision that denied certain railroads an extension of time before a curtailment of collective ratemaking became effective as prescribed in 49 U.S.C. 10706(a). The Court affirmed the Commission's finding that the

¹¹ *Public v. Simmons I*, 760 F.2d 126, 130 (7th Cir. 1985), petition for cert. filed 11/13/85, 47-10854 (Rev. 11/85).

¹² *Public v. Simmons II*, 763 F.2d 1171, 1175 (7th Cir. 1985).

¹³ *Washington of Employees v. Union Pacific*, 801 F.2d 114, 115 (D.C. Cir. 1986), petition for cert. filed 10/20/86, 47-10854 (Rev. 11/86).

¹⁴ *Public Service Company of Indiana*, 801 F.2d 776, 777, 783, 784 (D.C. Cir. 1986), cert. denied 47-10854 (October 1, 1986).

¹⁵ *Utah Public Service v. Utah Public Service Commission*, 801 F.2d 721, 723 (D.C. Cir. 1986), rehearing denied 764 F.2d 866 (D.C. Cir. 1986).

¹⁶ *Indiana Public Service v. Utah Public Service Commission*, 801 F.2d 776, 783 (D.C. Cir. 1986), cert. denied 47-10854 (October 1, 1986).

¹⁷ *The American Streetcar Line Employees v. Interstate Commerce Commission*, 783 F.2d 1011, 1012 (2d Cir. 1986).

involved railroads had failed to show they could not recover their costs in an efficient yet noncollusive manner.

The U. S. Court of Appeals for the District of Columbia Circuit affirmed²⁰ two Commission decisions finding that shipper complainants in a proceeding before the ICC had failed to prove market dominance by rail carriers named in their complaint, and that the Commission therefore lacked jurisdiction under 49 U.S.C. 10709(b) to determine the reasonableness of the rates at issue in the case. The two decisions affirmed by the D. C. Circuit were significant in that they endorsed the Commission's application of the market dominance standard under the Staggers Act, and because they limited a previous decision in *Arizona Public Service Co. v. U. S.*²¹ that had vacated an earlier ICC determination which had found no market dominance.

Rail freight rates for recyclable products continued to be litigated during the last fiscal year.²² The District of Columbia Circuit reviewed the Commission's then most recent ruling²³ under 49 U.S.C. 10731(c), which adopted a new methodology that would have required petitioning railroads to reduce further existing rates and to pay additional refunds under certain circumstances. The D. C. Circuit²⁴ invalidated the Commission's decision

to the extent that it had authorized rate reductions and/or refunds on individual movements of commodities whose rates in the aggregate were at or below 146 percent of variable costs.

In two rail-rate complaint actions considered by the United States Courts of Appeals for the Second²⁵ and Seventh²⁶ Circuits, the Courts held that the Supreme Court's *Keogh*²⁷ decision precluded any anti-trust action by certain shippers insofar as damage claims at issue were premised upon rates set forth in tariffs filed with and accepted by the Commission. The Commission joined in the Solicitor General's support for a petition for a writ of certiorari in the *Square D* proceeding which was granted at year's end.

In fiscal year 1985, the District of Columbia Circuit issued two significant decisions which affirmed the Commission's implementation of those Staggers Act provisions at Title 49, Section 11501, empowering the Commission to certify state regulation of intrastate rail traffic. In December 1984,²⁸ the D. C. Circuit upheld the Commission's authority to require, as a condition of a state's certification, that the state adopt automatically all Commission-ordered

²⁰ *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 760 F.2d 1347 (2d Cir. 1985), petition for cert. filed (U.S. July 5, 1985) (No. 85-21).

²¹ In the Matter of Wheat Rail Freight Rate Antitrust Litigation, 754 F.2d 1305 (7th Cir. 1985). This is a continuation of the controversy litigated in *In re Board of Trade of Chicago v. ICC*, 648 F.2d 1187 (7th Cir. 1981), wherein the Court held the Commission lacked authority to excuse a violation of the terms of a rate bureau's agreement approved by the agency under 49 U.S.C. § 10706(a), former Section 5a of the Interstate Commerce Act.

²² *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156 (1922).

²³ *Miners Commerce Commission v. ICC*, 749 F.2d 878 (D.C. Cir. 1984), cert. denied (October 7, 1985).

exemptions from the Interstate Commerce Act. In June 1985,²⁰ the D. C. Circuit affirmed the Commission's decision²¹ to deny permanent Staggers Act certification to the Railroad Commission of Texas. These favorable decisions of the D. C. Circuit will substantially aid the Commission in its certification of other states.

A number of significant cases were decided under the Bus Act involving rates, licensing applications, and exit petitions. Of particular significance was the decision by the District of Columbia Circuit in *Trailways, Inc. v. ICC*.²² An underlying Commission proceeding had granted additional authority to Greyhound Lines, Inc. upon its first application for authority under the Bus Act. The Court upheld the Commission's interpretation and application of the four-part, public-interest entry standard as it relates to Greyhound as the dominant bus carrier in the United States. The Court held that: (1) Greyhound was not likely to overschedule routes proposed; (2) the limited number of buses that Greyhound proposed to run on proposed routes would not substantially impair the entire regular route system of competing carriers; and (3) that the competing carrier had failed to show that there would be an adverse effect on small communities as a result of a grant to Greyhound.

The Commission's authority under the Bus Act regarding intrastate rates was also addressed by the courts. One significant Commission proceeding reviewed by the Eighth Circuit²³ involved an application of Jefferson Lines, Inc., to increase its intrastate bus rates in Missouri. The Missouri Public Service Commission denied the application. Acting under Section 11501(e)(2)(A)(i), the Commission reversed the decision and approved an intrastate rate hike over the protest of the Public Service Commission. Section 11501(e)(2) of the Bus Act establishes a rebuttable presumption that an intrastate rate imposes an unreasonable burden on interstate commerce if it results in a carrier charging an intrastate rate that is lower than a comparable interstate fare. Because all parties had agreed that the intrastate fares at issue were below comparable interstate rate levels, the question was whether the ICC had properly rejected Missouri's evidence as submitted in an effort to rebut the presumption.

The Court affirmed the Commission in all respects on this matter. On the issue of the Commission's analysis of the Public Service Commission's evidence, it specifically agreed with the ICC that revenue earned from a carrier's charter or express service is not relevant in a regular route, passenger-rate proceeding, and that only concrete evidence of demonstrable differences in operating conditions, services, or costs between comparable intra- and

²⁰ *Trailways, Inc. v. ICC*, 778 F.2d 1111 (D.C. Cir. 1985).

²¹ *Trailways, Inc. v. ICC*, 778 F.2d 1111 (D.C. Cir. 1985).

²² *Trailways, Inc. v. ICC*, 778 F.2d 1111 (D.C. Cir. 1985).

²³ *Trailways, Inc. v. ICC*, 778 F.2d 1111 (D.C. Cir. 1985).

interstate operations may rebut the presumption.³⁴

In the bus exit area, the United States Court of Appeals for the Fifth Circuit upheld a Commission decision approving the discontinuance of certain intrastate bus routes under 49 U.S.C. 10935 in a *State of Texas* decision.³⁵ The Fifth Circuit affirmed a Commission determination that, relative to Section 10935 applications, the ICC is entitled to weigh the national transportation policy³⁶ (including the economic factors embraced therein) in determining whether the public interest in maintaining a bus route is outweighed by the economic costs of doing so. The Fifth Circuit held that the Commission reasonably balanced competing factors in its decision to approve the application of Greyhound to discontinue ser-

vice between Houston and San Antonio, Texas, and between 26 additional off-route points.

In a *Pennsylvania Public Utility Comm'n* decision,³⁷ the District of Columbia Circuit affirmed a Commission decision permitting Greyhound to discontinue intrastate bus service over 11 routes in Pennsylvania, but reversed the ICC's approval for discontinuance of a twelfth route. In its affirmation of the Commission's action, the Court endorsed the ICC's finding that Greyhound's variable costs exceeded revenues for the routes in question and—most significantly—that the Bus Act creates a presumption in favor of discontinuance when a carrier demonstrates that variable costs for a route substantially exceed the revenues generated from it.

³⁴ See also *Commissioner of Transp. of State of New York v. United States*, 750 F.2d 163 (2d Cir. 1984); *S. Ct. No. 84-1115* (cert. denied) (U.S. Ct. 1985); *Alabama Service Comm'n v. ICC* (unpublished No. 84-7374 (11th Cir. 1985)). In *State of Texas v. United States*, 761 F.2d 211 (5th Cir. 1985), the court reversed the Commission's decision insofar as it relied upon a rate comparison without determining that the rates compared reasonably reflected the actual rates charged. The Court, however, rejected RCT's claims that the rebuttable presumption applies only to passenger fares and not to package express rates, and that the Commission has no jurisdiction to set intrastate charter rates.

³⁵ *State of Texas v. ICC*, 749 F.2d 841 (5th Cir. 1985).

³⁶ 49 U.S.C. 10101(a)(2).

³⁷ *Pennsylvania Public Utility Comm'n v. ICC*, 749 F.2d 841 (D.C. Cir. 1984).

FINANCIAL OVERSIGHT

The Commission's financial oversight activities include auditing, accounting and reporting, financial analysis, cost analysis, and cost development. These functions involve preparation, amendment, and interpretation of prescribed accounting and financial reporting rules, the examination and analysis of accounts and financial statements, and the compilation and publishing of transportation statistics and cost studies.

Accounting and Reporting Rulemaking

The Commission's prescribed accounting and reporting systems are continually reviewed with the objective of providing current useful information. This review program includes the modernization of current systems to keep pace with generally accepted accounting principles (GAAP), and to reduce reporting burdens while retaining those requirements which provide data the Commission needs.

During fiscal year 1985, the Commission approved the following changes:

- A final rule modifying the Commission's record-preservation regulations. This decision revised the preservation-of-record rules with the objective of prescribing only records that supply information which is regularly and frequently used by the Commission. The changes include removing the recordkeeping requirements for corporate history records that have minimal regulatory value. The changes will allow each regulated company more discretion in determining the length of time that

certain records should be retained. More importantly, this action will reduce the costs and regulatory burden of extensive record-keeping.¹

- A final rule revising the Form ARSC, "Annual Report of Railroad Employees, Service and Compensation." The new form is identical to Form QRSC, "Quarterly Report of Railroad Employees, Service and Compensation." By adopting the new form, the Commission eliminated the annual reporting of 112 individual job classifications and now requires only six summary classifications.²
- A final rule adopting a reporting revision that will require Class I railroads to submit a report from an independent public accountant stating that specified data in the "R-1" Annual Report of finances and operations have been examined, using agreed-upon procedures, and have been found in compliance with the Uniform System of Accounts for Railroad Companies. The report would also present any material exceptions which came to the attention of the accountant during the examination. This revision will provide an alternative to the audits currently being performed by the Commission staff. The revision is effective for the R-1 annual reports filed for the

¹ Docket No. 38849 (Sub-No. 1), *Examination of Preservation of Records Rules* (not printed), served March 15, 1985.

² Docket No. 37025 (Sub-No. 1), *Revision to the Annual Report of Railroad Employees Service and Compensation* (not printed), served January 7, 1985.

year 1986 which are to be filed by March 31, 1987.²

The Commission is proposing to eliminate the Uniform Systems of Accounts and revise the periodic reporting requirements for Class I and Class II common and contract motor carriers of property and Class I motor carriers of passengers.³

Cost and Financial Analysis

During fiscal year 1985, the Commission analyzed cost and financial evidence submitted by railroads and other entities of rates charged for the transportation of coal and other bulk commodities. These coal rate cases involving hundreds of millions of dollars affect virtually every household in the United States through the electric rates charged by coal-burning utilities. Also analyzed was evidence introduced in proceedings generated by Section 204 of the Staggers Rail Act of 1980 which set a cap on the rates that railroads may charge on movements of non-ferrous recycled and recyclable commodities. Analysis of the evidence in recyclable proceedings indicated potential reparations to be paid to shippers in the amount of approximately \$2,356,000.

The Commission also analyzed cost and financial evidence submitted in connection with motor carrier requests for general rate increases. These analyses included an assessment of the revenue needed to cover

operating costs and to provide a fair and reasonable return on invested capital. Generally, the Commission allowed these rate increases to become effective without suspension or investigation.

The Commission additionally issued a final decision adopting Constrained Market Pricing (CMP) as the analytical framework for the assessment of maximum reasonable coal rates.⁴ Under CMP, a captive coal shipper should not be required to pay more than is necessary for the rail carrier(s) involved to earn adequate revenues. The shipper should pay no more than is necessary for efficient service, nor should it bear the costs of any facilities or services from which it derives no benefit. The responsibility for payment for facilities or services which are shared (to a shipper's benefit) by other shippers should be apportioned among them according to the demand elasticities of the various shippers. Under this system, railroads would be given incentives to ensure that competitive traffic contributes as much as possible toward these costs. Finally, changes in coal rates should not be so precipitous as to cause severe economic dislocations.

In adopting the final coal guidelines, the Commission made significant changes in response to certain concerns raised by shippers. These changes include: (1) elimination of the proposed 15-percent annual phase-in of rates in favor of a case-by-case scrutiny of the need for phasing; (2) adoption of a long run

² 49 U.S.C. 10101-10102, 10103-10104, 10105-10106, 10107-10108, 10109-10110, 10111-10112, 10113-10114, 10115-10116, 10117-10118, 10119-10120, 10121-10122, 10123-10124, 10125-10126, 10127-10128, 10129-10130, 10131-10132, 10133-10134, 10135-10136, 10137-10138, 10139-10140, 10141-10142, 10143-10144, 10145-10146, 10147-10148, 10149-10150, 10151-10152, 10153-10154, 10155-10156, 10157-10158, 10159-10160, 10161-10162, 10163-10164, 10165-10166, 10167-10168, 10169-10170, 10171-10172, 10173-10174, 10175-10176, 10177-10178, 10179-10180, 10181-10182, 10183-10184, 10185-10186, 10187-10188, 10189-10190, 10191-10192, 10193-10194, 10195-10196, 10197-10198, 10199-10200, 10201-10202, 10203-10204, 10205-10206, 10207-10208, 10209-10210, 10211-10212, 10213-10214, 10215-10216, 10217-10218, 10219-10220, 10221-10222, 10223-10224, 10225-10226, 10227-10228, 10229-10230, 10231-10232, 10233-10234, 10235-10236, 10237-10238, 10239-10240, 10241-10242, 10243-10244, 10245-10246, 10247-10248, 10249-10250, 10251-10252, 10253-10254, 10255-10256, 10257-10258, 10259-10260, 10261-10262, 10263-10264, 10265-10266, 10267-10268, 10269-10270, 10271-10272, 10273-10274, 10275-10276, 10277-10278, 10279-10280, 10281-10282, 10283-10284, 10285-10286, 10287-10288, 10289-10290, 10291-10292, 10293-10294, 10295-10296, 10297-10298, 10299-10300, 10301-10302, 10303-10304, 10305-10306, 10307-10308, 10309-10310, 10311-10312, 10313-10314, 10315-10316, 10317-10318, 10319-10320, 10321-10322, 10323-10324, 10325-10326, 10327-10328, 10329-10330, 10331-10332, 10333-10334, 10335-10336, 10337-10338, 10339-10340, 10341-10342, 10343-10344, 10345-10346, 10347-10348, 10349-10350, 10351-10352, 10353-10354, 10355-10356, 10357-10358, 10359-10360, 10361-10362, 10363-10364, 10365-10366, 10367-10368, 10369-10370, 10371-10372, 10373-10374, 10375-10376, 10377-10378, 10379-10380, 10381-10382, 10383-10384, 10385-10386, 10387-10388, 10389-10390, 10391-10392, 10393-10394, 10395-10396, 10397-10398, 10399-10400, 10401-10402, 10403-10404, 10405-10406, 10407-10408, 10409-10410, 10411-10412, 10413-10414, 10415-10416, 10417-10418, 10419-10420, 10421-10422, 10423-10424, 10425-10426, 10427-10428, 10429-10430, 10431-10432, 10433-10434, 10435-10436, 10437-10438, 10439-10440, 10441-10442, 10443-10444, 10445-10446, 10447-10448, 10449-10450, 10451-10452, 10453-10454, 10455-10456, 10457-10458, 10459-10460, 10461-10462, 10463-10464, 10465-10466, 10467-10468, 10469-10470, 10471-10472, 10473-10474, 10475-10476, 10477-10478, 10479-10480, 10481-10482, 10483-10484, 10485-10486, 10487-10488, 10489-10490, 10491-10492, 10493-10494, 10495-10496, 10497-10498, 10499-10500, 10501-10502, 10503-10504, 10505-10506, 10507-10508, 10509-10510, 10511-10512, 10513-10514, 10515-10516, 10517-10518, 10519-10520, 10521-10522, 10523-10524, 10525-10526, 10527-10528, 10529-10530, 10531-10532, 10533-10534, 10535-10536, 10537-10538, 10539-10540, 10541-10542, 10543-10544, 10545-10546, 10547-10548, 10549-10550, 10551-10552, 10553-10554, 10555-10556, 10557-10558, 10559-10560, 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10715-10716, 10717-10718, 10719-10720, 10721-10722, 10723-10724, 10725-10726, 10727-10728, 10729-10730, 10731-10732, 10733-10734, 10735-10736, 10737-10738, 10739-10740, 10741-10742, 10743-10744, 10745-10746, 10747-10748, 10749-10750, 10751-10752, 10753-10754, 10755-10756, 10757-10758, 10759-10760, 10761-10762, 10763-10764, 10765-10766, 10767-10768, 10769-10770, 10771-10772, 10773-10774, 10775-10776, 10777-10778, 10779-10780, 10781-10782, 10783-10784, 10785-10786, 10787-10788, 10789-10790, 10791-10792, 10793-10794, 10795-10796, 10797-10798, 10799-10800, 10801-10802, 10803-10804, 10805-10806, 10807-10808, 10809-10810, 10811-10812, 10813-10814, 10815-10816, 10817-10818, 10819-10820, 10821-10822, 10823-10824, 10825-10826, 10827-10828, 10829-10830, 10831-10832, 10833-10834, 10835-10836, 10837-10838, 10839-10840, 10841-10842, 10843-10844, 10845-10846, 10847-10848, 10849-10850, 10851-10852, 10853-10854, 10855-10856, 10857-10858, 10859-10860, 10861-10862, 10863-10864, 10865-10866, 10867-10868, 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marginal cost standard to estimate inefficiencies and (3) clarification of the importance of "grouping" in stand-alone costs.

During the past fiscal year the Commission determined that the railroad industry's cost of capital or fair rate of return for 1983 was 15.3 percent, and found that none of the Class I railroads were revenue adequate based on 1983 data.

The Commission also began a study to determine the railroad industry's current cost of capital for 1984. The results of that study will be used to update the Commission's revenue adequacy findings. A decision is expected shortly on the Commission's proposal to improve existing standards for the determination of railroad revenue adequacy.

The Commission continued its monitoring of the financial condition of large transportation companies to evaluate whether they were financially able to provide adequate service to shippers. Quarterly reports were publicly released which showed

the latest quarter and twelve-month earnings, traffic volume, and rate-of-return data for all Class I railroads, 100 of the largest trucking companies, 15 of the largest household goods carriers, and 20 of the largest bus companies. Significant delays in the release of certain of these reports was a result of last fiscal year's Commission-wide employee furlough.

Cost Development

During fiscal year 1985, the Commission released final rules for the calculation, submission, and processing of a new all-inclusive index of railroad costs. These rules are used for the calculation of the quarterly Rail Cost Adjustment Factor (RCAF). The new all-inclusive indexing methodology substitutes individual railroad-specific factors for the former "all other" index component which had been measured by the Producer Price Index.

Within the past fiscal year the Commission released four quarterly decisions that published the RCAF as part of its new streamlined general rate increase procedure. Since the RCAF did not exceed a previously higher level during the year, no rate increases were permitted.

The Staggers Rail Act of 1980 requires the annual calculation of a Cost Recovery Percentage (CRP). This CRP serves as a threshold for Commission regulation of market-dominant rail traffic when it falls between 170 percent and 180 per-

centage. The Commission's annual CRP decision is published in the Federal Register. The Commission's annual CRP decision is published in the Federal Register.

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cent. The Commission calculated a final 1984 Cost Recovery Percentage (CRP) and issued a decision that continued the use of the 1983 CRP (342.5 percent, as calculated using 1981 costs and movement data) because a CRP could not be calculated using 1982 data since costs exceeded revenues.¹ Because the ICC's calculation was in excess of the 180-percent level, the maximum statutory threshold of 180 percent rather than the calculated percentage was used as the threshold.

The Commission decided that a decision on the adoption of the Uniform Railroad Costing System (URCS) will be held in abeyance pending its review by the Railroad Accounting Principles Board (RAPB).² The RAPB was established by the Staggers Rail Act of 1980 but legislation funding the RAPB was not passed until 1984.

The Commission also issued a decision containing revenue-to-variable-cost ratios that apply or should have applied in maximum rate regulation of nonferrous recyclables for the year 1982-85. Additionally, the decision provided guidelines for calculating the cost ratio, applying it to recyclable rates, and determining reparations where revenues exceeded the maximum ratio.

The Commission also continued to monitor nationwide diesel fuel prices and provided weekly summaries of

the price data to the public during fiscal year 1985.

Directed Service

On September 26, 1979, the Commission concluded that the Rock Island Railroad had exhausted all of its operating funds, and directed the Kansas City Terminal Railway Company (KCT) to operate over the entire Rock Island system, beginning October 5, 1979. This directed-service authority expired on March 23, 1980, and was the first Commission directed-service experience involving such a large and complex operation. As of September 30, 1985, \$88.9 million of a total appropriation of \$91.1 million had been disbursed to the KCT. The Commission had ordered that all directed-service accounting operations be terminated on March 31, 1983.³

KCT has continued to act as a government agent in the payment of various claims, most of which have been liquidated. KCT had requested an additional management fee for its efforts beyond the operational directed-service period. Although the request was denied, this case was reopened on August 1, 1985, requiring additional evidence from the KCT. As of September 30, 1985, no final determination with respect to an additional management fee had been made.

Subsequent to the termination of directed service on March 23, 1980, and with advice from the Department

¹ICC v. Rock Island Railroad, 758 F.2d 1001, 1002 (D.C. Cir. 1985).
²ICC v. Rock Island Railroad, 758 F.2d 1001, 1002 (D.C. Cir. 1985).
³ICC v. Rock Island Railroad, 758 F.2d 1001, 1002 (D.C. Cir. 1985).

⁴ICC v. Rock Island Railroad, 758 F.2d 1001, 1002 (D.C. Cir. 1985).
⁵ICC v. Rock Island Railroad, 758 F.2d 1001, 1002 (D.C. Cir. 1985).
⁶ICC v. Rock Island Railroad, 758 F.2d 1001, 1002 (D.C. Cir. 1985).

of Transportation, the Commission authorized 24 railroads to operate certain Rock Island line segments without government funding. The railroads provided service on a voluntary basis so that a substantial portion of Rock Island service could be continued. A number of railroads expressed an interest in purchasing Rock Island lines which they were operating, and some lines were purchased. The ICC also authorized the State of South Dakota and three railroads to rehabilitate certain trackage segments. Federal subsidy totaled approximately \$5.4 million, of which \$2.7 million was disbursed to South Dakota and \$3 million to three railroads.

Auditing

Functions performed by Commission audit staff in fiscal year 1985 included the following:

- The performance of audits of most Class I railroads.
- Investigations of transactions between railroads and affiliated companies to determine the impact on the railroads' financial condition.
- Review of the procedures used by the railroads and the Association of American Railroads (AAR) in developing the AAR Index used to calculate the RCAF.¹⁸ The purpose of the review is to ensure the accuracy and reliability of the procedures and the source data used in the development of the index.
- Performance of an annual internal audit of the Commission's fiscal operation and review of the internal controls in place to determine compliance with the Federal Managers' Financial Integrity Act of 1982.¹⁹

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APPENDIX A

Commission Organization

The major bureaus and offices of the Commission are listed below. Heads of each bureau or office report to the Chairman via the channels indicated on the organization chart.

STAFF OFFICIALS

Office of the Chairman
Executive Staff

David M. Kornreich

Office of Legislation and Public Affairs
Director

Alexander H. Jordan

Office of Budget and Finance
Director

Samuel F. Kaufman
Assistant
Director

Office of Human Resources
Director

Alexander W. Harkavy

Office of the Minority Director
Minority Director
Assistant Minority Director
Assistant Minority Director
Assistant Minority Director
Assistant Minority Director

Frederic E. Guthrie
Assistant Minority Director
Assistant Minority Director
Assistant Minority Director
Assistant Minority Director

Office of the Minority Director
Assistant Minority Director
Assistant Minority Director

Frederic E. Guthrie
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Assistant Minority Director
Assistant Minority Director

Office of the Minority Director

Frederic E. Guthrie
Assistant Minority Director
Assistant Minority Director
Assistant Minority Director
Assistant Minority Director

Office of Transportation Analysis

Director

William R. Southard

Chief, Section of Rail Services Planning

Michael E. Sullivan

Chief, Section of Energy and Environment

Carl P. Bausch

Chief, Section of Research and Analysis

Leland L. Gardner

Office of Hearings

Chief, Administrative Law Judge

Paul S. Cross

Bureau of Accounts

Director

Ronald E. Young

Deputy Director

William F. Moss, III

Office of Comptroller and Treasurer Assistance

Director

Bernard Gaillard

Assistant Director

William J. Love

Deputy Director, Section of Comptroller

Hilary P. Hardy

Deputy Director, Section of Treasurer

Charles E. Wagner

Bureau of Assets

Director

Ronald L. Swellby

DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS

Region I

Regional Headquarters Robert L. Abare, Regional Director
150 Causeway St., Room 501
East Boston, MA 02114

Connecticut 135 High St., Room 324
Hartford, CT 06103

Maine 76 Pearl St., Room 303
Portland, ME 04101

Massachusetts 150 Causeway St., Room 501
Boston, MA 02114

210 Federal Building
1550 Main St.
Springfield, MA 01103

New Hampshire James C. Cleveland, Federal
Building
55 Pleasant St., Room 314
Concord, NH 03301

New Jersey Peter Rodino, Federal Building
970 Broad St., Room 1435G
Newark, NJ 07102

New York 910 Federal Building
111 West Huron St.
Buffalo, NY 14202

Jacob K. Javits, Federal Building
26 Federal Plaza, Room 1807
New York, NY 10278

Rhode Island John E. Fogarty, Federal
Building
24 Weybosset St., Room 100
Providence, RI 02903

Vermont 85 State St., Room 303
Montpelier, VT 05602
Mailing Address: P.O. Box 546

DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS — Continued

Region II

Regional Headquarters . . . M. Faith Angell, Regional Director
Gateway Building
3535 Market St., Room 16400
Philadelphia, PA 19104

Delaware See nearest ICC Field Office.
New Jersey, Maryland or
Pennsylvania

Maryland 1025 Federal Building
Charles Center
31 Hopkins Plaza
Baltimore, MD 21201

Ohio A.J. Celebrezze Federal Building
1240 E. Ninth St., Room 913
Cleveland, OH 44199

Pennsylvania Gateway Building, Room 16400
3535 Market St.
Philadelphia, PA 19104

The Convention Tower Building
960 Penn Ave., Room 405
Pittsburgh, PA 15222

Virginia 8-255 Federal Building
400 North 8th St.
Richmond, VA 23240

West Virginia 416 Old Post Office Building
12th & Chapline Sts.
Wheeling, WV 26003

Region III

Regional Headquarters . . . Benjamin R. McKenzie, Regional Director
1718 Peachtree St., NW
Room 360
Atlanta, GA 30309

Alabama.....2121 Building, Suite 703
2121 8th Ave., North
Birmingham, AL 35203

Florida.....4057 Carmichael Ave.
Suite 233
Jacksonville, FL 32207

Monterey Building, Suite 104,
8410 NW 53rd Terrace
Miami, FL 33166

Georgia.....1718 Peachtree St., NW
Room 360
Atlanta, GA 30309

Kentucky.....625 U.S. Post Office
601 West Broadway
Louisville, KY 40202

Mississippi.....Federal Building, Suite 1441
100 West Capitol St.
Jackson, MS 39201

North Carolina.....Room CC-516 Mart Office Building
800 Briar Creek Rd.
Charlotte, NC 28205

South Carolina.....Strom Thurmond Federal Building
1835 Assembly St., Suite 876
Columbia, SC 29201

Tennessee.....Room 211, Federal Office Building
167 North Main Street
Memphis, TN 38103

Federal Building 801 Broadway, A422
Nashville, TN 37203

Region IV

Regional Headquarters...William Redmond, Jr., Regional Director
Everett McKinley Dirksen Building
Room 1304
219 South Dearborn St.
Chicago, IL 60604

**DIRECTORY OF INTERSTATE COMMERCE
COMMISSION FIELD OFFICES AND REGIONAL
HEADQUARTERS — Continued**

Illinois	Everett McKinley Dirksen Building Room 1304 219 South Dearborn St. Chicago, IL 60604
Indiana	429 Federal Building & U.S. Courthouse 46 East Ohio St. Indianapolis, IN 46204
Michigan	201 Corr Building 300 East Michigan Lansing, MI 48933
Minnesota	475 Federal Building & U.S. Courthouse 110 South Fourth St. Minneapolis, MN 55401
North Dakota	453 Federal Building & U.S. Post Office 657 2nd Ave., North Fargo, ND 58102
South Dakota	225 South Pierre St. Room 308 Federal Building Pierre, SD 57501
Wisconsin	U.S. Federal Building & Courthouse 517 East Wisconsin Ave. Room 603 Milwaukee, WI 53202

Region V

Region Headquarters	Oliver H. Miles, Acting Regional Director 411 West 7th St., Suite 500 Ft. Worth, TX 76102
Arkansas	3108 Federal Building Little Rock, AR 72201
Iowa	518 Federal Building 210 Walnut Street Little Rock, AR 72201

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Louisiana	T-9038 Federal Building & U.S. Post Office 701 Loyola Ave. New Orleans, LA 70113
Missouri	2111 Federal Building 911 Walnut St. Kansas City, MO 64106 210 North 12th St., Room 1161 St. Louis, MO 63101
Nebraska	Room 728, Federal Office Building 106 South 15th St. Omaha, NE 68102
Oklahoma	240 Old U.S. Post Office & Courthouse 215 NW 3rd St. Oklahoma City, OK 73102
Texas	411 West 7th St., Suite 500 Ft. Worth, TX 76102 8610 Federal Building & U.S. Courthouse 515 Rusk Ave. Houston, TX 77002

Region VI

Regional Headquarters	Arthur E. Bacon, Regional Director 211 Main St., Suite 500 San Francisco, CA 94105
Alaska	Federal Building & U.S. Courthouse 701 C St., Box 7 Anchorage, AK 99513
Arizona	2028 Federal Building 230 North 1st Ave. Phoenix, AZ 85025
California	1321 Federal Building 301 North Los Angeles St. Los Angeles, CA 90012 211 Main St. Suite 500 San Francisco, CA 94105 PO Box 31B San Ysidro, CA 92163

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**DIRECTORY OF INTERSTATE COMMERCE
COMMISSION FIELD OFFICES AND REGIONAL
HEADQUARTERS — Continued**

Colorado	142 U.S. Customs House 721 19th St. Denver, CO 80202
Idaho	Federal Building & U.S. Courthouse 550 West Fort, Room 164 Boise, ID 83724
Montana	Room 217, U.S. Post Office Building 2602 First Ave., North Billings, MT 59101
Nevada	107 Federal Building 705 North Plaza St. Carson City, NV 89701
New Mexico	3006 Federal Building 517 Gold Ave., SW Albuquerque, NM 87101
Oregon	511 N.W. Broadway Room 603 Portland, OR 97209
Utah	2419 Federal Building 125 State St. Salt Lake City, UT 84138
Washington	858 Federal Building 915 2nd Ave. Seattle, WA 98174
Wyoming	105 Federal Building & U.S. Courthouse 111 South Wolcott Casper, WY 82601

INTERSTATE COMMERCE COMMISSIONERS 1887-1984

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1. COOLEY, Thomas M.	Mich.	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	Ill.	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	N.Y.	Dem.	Mar. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	Vt.	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter L.	Ala.	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	Vt.	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	N.Y.	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	Iowa	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	Ga.	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	Iowa	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	Vt.	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	Ill.	Rep.	Mar. 21, 1898	Sept. 30, 1899
13. FIFER, Joseph W.	Ill.	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	Mo.	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	Calif.	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	Iowa	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	Ill.	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	Ky.	Dem.	Dec. 31, 1910	Jan. 1, 1926
19. MEYER, Balthasar H.	Wis.	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	Calif.	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	Colo.	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	N.J.	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	Oreg.	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	Va.	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	Mass.	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	Mass.	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J. ¹	N.J.	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	N.Y.	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	Wis.	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	Wash.	Rep.	May 5, 1921	Jan. 6, 1930
31. LEWIS, Ernest I.	Ind.	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	N.J.	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	N.Y.	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	Ala.	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra, Jr.	Okla.	Rep.	Feb. 23, 1927	Dec. 31, 1933

¹ Records appointment only, not confirmed

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
37. PORTER, Claude R.	Iowa	Dem.	Jan. 28, 1928	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934
39. LEE, William E.	Idaho	Rep.	Jan. 18, 1930	Aug. 18, 1953
40. TATE, Hugh M.	Tenn.	Rep.	Feb. 28, 1930	Sept. 16, 1937
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	Pa.	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M.W.	Tex.	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	Ala.	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	Tenn.	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALLDREDGE, J. Haden	Ala.	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	N.D.	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	S.C.	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	Ind.	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	Iowa	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	Ill.	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	Utah	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	Ind.	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	Conn.	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	Wash.	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	Calif.	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	Ky.	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	Colo.	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, Everett	Tex.	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	Ga.	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	Ohio	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	Fla.	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	Pa.	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	Idaho	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	Va.	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	Iowa	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	Ohio	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	Mass.	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	Md.	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	W. Va.	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	Tex.	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	Kans.	Rep.	Apr. 26, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	Calif.	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	Ill.	Rep.	July 31, 1967	Aug. 31, 1977
75. BURKE, Wallace R.	Conn.	Dem.	Aug. 21, 1969	June 28, 1969
76. JACKSON, Donald L.	Calif.	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C.	Md.	Rep.	Dec. 15, 1969	June 18, 1982
78. BREWER, W. Donald	Colo.	Rep.	July 23, 1970	June 30, 1974
79. WIGGIN, Chester M., Jr.	N.H.	Rep.	Oct. 24, 1972	July 31, 1973

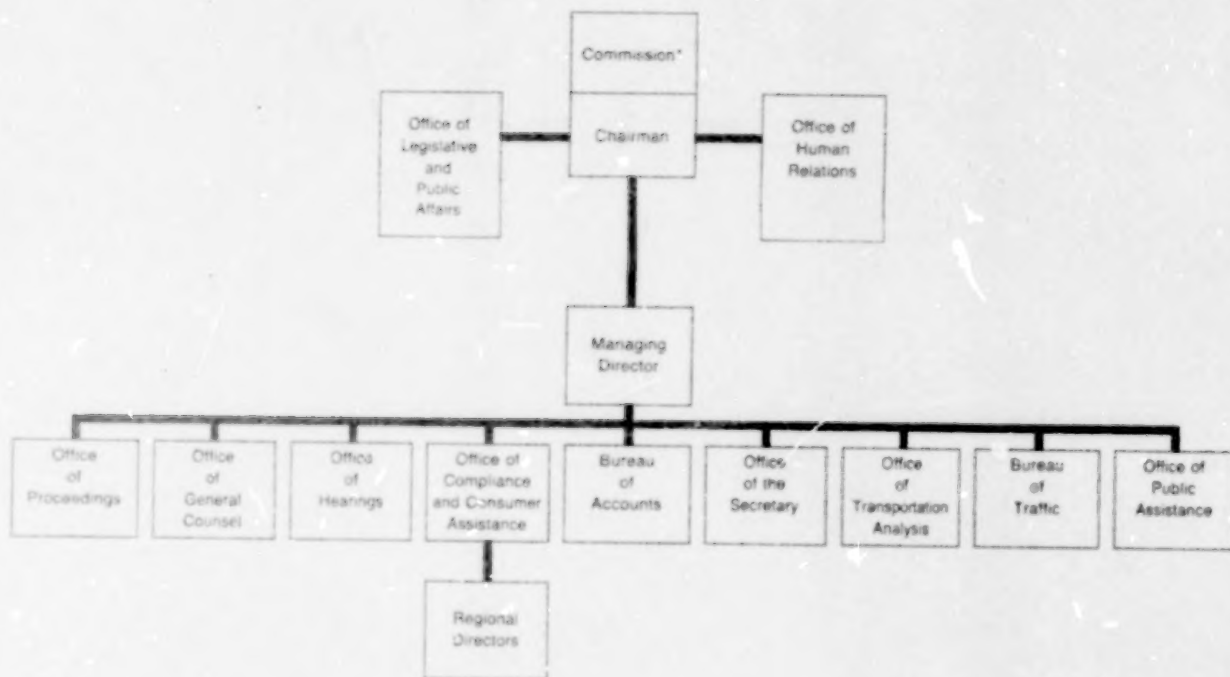
Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
80. McFARLAND, Alfred T.	Tenn.	Ind.	Nov. 1, 1972	Nov. 10, 1977
81. MONTEJANO, Rodolfo ¹	Calif.	Dem.	Nov. 3, 1972	Mar. 2, 1973
82. O'NEAL, A. Daniel, Jr.	Wash.	Dem.	Apr. 12, 1973	Dec. 31, 1979
83. CLAPP, Charles L.	Mass.	Rep.	Mar. 14, 1974	Mar. 19, 1982
84. CORBER, Robert J.	Va.	Rep.	Mar. 13, 1975	Dec. 1, 1976
85. CHRISTIAN, Betty Jo	Tex.	Dem.	Apr. 7, 1976	Dec. 31, 1979
86. TRANTUM, Thomas A.	Conn.	Rep.	July 23, 1979	July 31, 1981
87. GASKINS, Darius W.	D.C.	Dem.	July 23, 1979	Feb. 1, 1981
88. ALEXIS, Marcus	Ill.	Dem.	Aug. 27, 1979	June 30, 1981
89. GILLIAM, Reginald E.	Va.	Dem.	Apr. 21, 1980	Feb. 1, 1983
90. TAYLOR, Reese H., Jr. ²	Nev.	Rep.	June 25, 1981	
91. STERRETT, Malcolm M.B. ²	Md.	Rep.	Feb. 12, 1982	
92. ANDRE, Frederic N. ²	Ind.	Rep.	Mar. 19, 1982	
93. SIMMONS, J.J., III. ^{2,3}	Okla.	Dem.	Apr. 27, 1982	Feb. 28, 1983
			Sept. 10, 1984	
94. GRADISON, Heather J. ²	Ohio	Rep.	June 18, 1982	
95. LAMBOLEY, Paul H. ²	Nev.	Dem.	Sept. 11, 1984	
96. STRENIO, Andrew J., Jr.	Md.	Dem.	Sept. 14, 1984	Dec. 31, 1985

¹ Recess appointment only, not confirmed

² Currently serving

³ Commissioner Simmons resigned as a Commission member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the Commission in September 1984 following his Presidential appointment and Senate confirmation.

INTERSTATE COMMERCE COMMISSION



*In deciding most proceedings, the Commission is divided into two divisions of general jurisdiction, each comprised of three Commissioners. Rulemakings and significant adjudications are decided by the entire Commission.

APPENDIX B

Commission Workload

Table 1.—Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1985

Motor Matters						
Case Type	Closings					Total
	Open-ings	Opposed	Un- opposed	Dis- missed/ Rejected/ With- drawn	Other	
Rulemaking	8	9	0	0	0	9
Motor Carrier Licensing	11,748 ¹	326	11,353	158	11	11,848
Passenger Carrier Exit	11	10	0	0	0	10
Water Carrier Licensing	43	1	34	1	0	36
Freight Forwarder Licensing	70	0	60	4	0	64
Property Broker Licensing	1981	3	1872	12	0	1987
Motor Carrier Complaints	23	12	0	0	0	12
Restriction Removal	42	5	22	11	0	38
Investigation and Suspension	6	4	0	0	0	4
Motor Rate	29	25	0	0	0	25
Passenger Rate Review (State)	18	20	0	0	0	20
Motor Carrier Finance	355 ²	26	322	45	2	395
Small Carrier Transfer	748 ³	0	245	6	2	253
Motor Finance Temporary Authority	243	1	415	17	3	436
Totals	15,325	442	14,323	254	16	15,037

¹ 972 were passenger entry applications.

² 273 exemptions pursuant to Docket Ex Parte No. 55 (Sub No. 57).

³ 441 exemptions pursuant to Docket Ex Parte No. 55 (Sub No. 57A).

Rail Matters					
Case Type	Closings				Total
	Open-ings	Pending	Procedural Decisions	Substantive Decisions	
Rulemaking	14	31	30	30	60
Abandonments (Non-Conrail)	113	52	159	125	284
Abandonments (Conrail)	29	10	9	87	96
Abandonment Exemptions	131	30	5	147	152
Rates: Complaints/ Declaratory Orders	41	126	73	63	136
Investigations/ Suspension	2	12	16	1	17
Exemptions	122	22	1	128	129

Rail Matters — Continued

<i>Case Type</i>	<i>Open- ings</i>	<i>Pending</i>	<i>Closings</i>		<i>Total</i>
			<i>Procedural Decisions</i>	<i>Substantive Decisions</i>	
Finance Docket					
Exemptions	101	33	13	108	121
Finance Docket (Others) ¹	120	44	45	191	236
Totals	673	360	351	880	1231

¹Includes construction, trackage rights, licensing, etc.

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1985 (* indicates actions completed)

RAILROADS	
Ex Parte No. 73* and Ex Parte No. MC-1	Regulations for Payment of Rates and Charges
Ex Parte No. 230 (Sub-No. 5)	Improvement of TOFC/COFC Regulations
Ex Parte No. 230 (Sub-No. 5A)	Petition to Exempt Rail Movement of New Containers and Trailers
Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulations
Ex Parte No. 241 (Sub-No. 1)*	Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, and Rules and Practices
Ex Parte No. 274 (Sub-No. 11)	Abandonment Regulations—Costing
Ex Parte No. 274 (Sub-No. 13)	Rail Abandonment—Use of Rights-of-Way as Trails
Ex Parte No. 274 (Sub-No. 14)	Rail Abandonment—Offers of Financial Assistance
Ex Parte No. 274 (Sub-No. 15)	Revision of Abandonment Regulations
Ex Parte No. 282 (Sub-No. 9)*	Railroad Consolidation Procedures—Trackage Rights Exemption
Ex Parte No. 290 (Sub-No. 2)	Railroad Cost Recovery Procedures
Ex Parte No. 290 (Sub-No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment Factor
Ex Parte No. 319	Investigation of Freight Rates for the Transportation of Recyclables and Recycled Materials
Ex Parte No. 320 (Sub-No. 3)	Product and Geographic Competition
Ex Parte No. 328	Investigation of Tank Car Allowance System
Ex Parte No. 334*	Car Service Compensation—Basic Per Diem Charges—Formula Revision in Accordance with the Railroad Revitalization and Regulatory Reform Act of 1976
Ex Parte No. 334 (Sub-No. 5)*	Zone of Reasonableness for Car Hire Charges
Ex Parte No. 334 (Sub-No. 6)	Review of Car Hire Regulations
Ex Parte No. 334 (Sub-No. 7)	Suspension of Car Hire, Updates
Ex Parte No. 346 (Sub-No. 7)	Railroad Exemption—Export Coal
Ex Parte No. 346 (Sub-No. 8)	Exemption from Regulation Box Car Traffic

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1985 — Continued

RAILROADS — Continued	
Ex Parte No. 346 (Sub-No. 19)	Boxcar Car Hire and Car Service
Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines—Nationwide
Ex Parte No. 387	Railroad Transportation Contracts
Ex Parte No. 387 (Sub-No. 958)	Exemption from Regulation—Shipments Subsequently Made Subject to a Contract Rate
Ex Parte No. 388	State Intrastate Rail Rate Authority
Ex Parte No. 392 (Sub-No. 1)	Class Exemption for the Acquisition and Operation of Rail Line Under 49 U.S.C. 10901
Ex Parte No. 393 (Sub-No. 1)	Standards for Railroad Revenue Adequacy
Ex Parte No. 394 (Sub-No. 1)*	Cost Ratio for Recyclables—1983 Determination
Ex Parte No. 397	Exemption of Railroads from Security Regulations
Ex Parte No. 399	Cost Recovery Percentage
Ex Parte No. 421	Complaints filed Under Staggers Rail Act of 1980
Ex Parte No. 431	Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purpose of Surcharge and Jurisdictional Threshold Calculations
Ex Parte No. 438*	Acquisition of Motor Carriers by Railroads
Ex Parte No. 444	Electronic Filing for Tariffs
Ex Parte No. 445*	Standards for Intramodal Rail Competition
Ex Parte No. 445 (Sub-No. 1)	Intramodal Rail Competition
Ex Parte No. 452	Railroad Cost of Capital—1983
Ex Parte No. 462	Exemption of Demurrage from Regulation
TRUCK AND BUS COMPANIES	
Ex Parte No. MC-37* (Sub-No. 36)	Houston, TX Commercial Zone
Ex Parte No. MC-43* (Sub-No. 14)	Lease and Interchange Regulations (Master Leases)
Ex Parte No. MC-43* (Sub-No. 15)	Thirty Day Leasing
Ex Parte No. MC-65 (Sub-No. 43A)	Acceptable Forms of Requests for Operating Authority, (Motor Carriers and Brokers of Property)

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TRUCK AND BUS COMPANIES — Continued

Ex Parte No. MC-55* (Sub-No. 57)	Exemption of Transactions Under 49 U.S.C. §11343 Involving Certain Motor Carriers of Property
Ex Parte No. MC-55* (Sub-No. 57A) ...	Modification of Small Carrier Transfer Regulations for Transactions Involving Motor Carriers of Property
Ex Parte No. MC-55 (Sub-No. 62).....	Applications for Certificates of Registration for Certain Foreign Carriers
sEx Parte No. MC-64 (Sub-No. 2A)	Special Temporary Authority Procedures.....
Ex Parte No. MC-65 (Sub-No. 6)	Petition to Expand Passenger Motor Carrier Superhighway & Deviation Rules
Ex Parte No. MC-73 (Sub-No. 1)	Interchange Policies at International Boundaries
Ex Parte No. MC-95 (Sub-No. 3).....	Regulations Governing The Adequacy of Intercity Motor Common Carrier Passenger Service
Ex Parte No. MC-97* (Sub-No. 2)	Investigation into Practices of Motor Common Carriers of Property
Ex Parte No. MC-142 (Sub-No. 1).....	Removal of Restriction from Authorities of Motor Carriers of Property
Ex Parte No. MC-170 (Sub-No. 1).....	Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates
Ex Parte No. MC-172*	Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments
Ex Parte No. MC-175	International Joint Through Rates Involving Ocean Carriers—Revision of Tariff Filing Requirements
Ex Parte No. MC-297 (Sub-No. 7)	Motor Carrier—Rate Bureaus—Expansion of Collective Ratemaking Territory

TABLE 3.—Listing of formal significant cases, September 30, 1985

MOTOR SECTION

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 55 (Sub-No. 43A) and Ex Parte No. MC-142 (Sub-No. 1)	Acceptable Forms of Requests for Operating Authority; (Motor Carriers and Brokers of Property) Removal of Restriction from Authorities of Motor Carriers of Property.	None
2. Ex Parte No. MC-64 (Sub-No. 2A)	Special Temporary Authority Procedures	None

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MOTOR SECTION

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
3. Ex Parte No. MC-65 (Sub-No. 6)	Petition to Expand Passenger Motor Carrier Superhighway & Deviation Rules.	None
4. Ex Parte No. MC-73 (Sub-No. 1)	Interchange Policies at International Boundaries	None
5. Ex Parte No. MC-95 (Sub-No. 3)	Regulations Governing The Adequacy of Intercity Motor Common Carrier Passenger Service	None
6. Ex Parte No. 297 (Sub-No. 7)	Motor Carrier—Rate Bureaus—Expansion of Collective Ratemaking Territory	None
7. Ex Parte No. MC-170 (Sub-No. 1)	Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates	None
8. Ex Parte No. MC-175	International Joint Through Rates Involving Ocean Carriers—Revision of Tariff Filing Requirements	None
9. Ex Parte No. MC-37 (Sub-No. 38)	Petition to Establish a Commercial Zone of Cameron, Hidalgo, Starr, and Willacy Counties, TX	None
10. Ex Parte No. MC-122 (Sub-No. 2)	Lease of Equipment and Drivers of Private Carriers—Petitions for Modification	None
11. Ex Parte No. MC-177	National Industrial Transportation League—Petition to Institute Rulemaking on Negotiated Motor Common Carrier Rates	None

RAIL SECTION

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 73 and MC-1	Regulations for Payment of Rates and Charges	None
2. Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)	None
3. Ex Parte No. 334 (Sub-No. 6)	Review of Car Hire Regulation	None
4. Ex Parte No. 334 (Sub-No. 7)	Suspension of Car Hire Updates	None
5. Ex Parte No. 394 (Sub-No. 1)	Cost Ration. for Recyclables—1983 Determination	8/28/86

RAIL SECTION

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
6. S5B2, S5B3, S5B6	Western, Eastern, and Southern Rate Bureau Agreements	None
7. F.D. No. 30400	Santa Fe Southern Pacific Corp.—Control—Southern Pacific Trans. Company; Merger—The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transp. Co.	10/20/86
8. F.D. No. 30186	Tongue River Railroad Co.—Rail Construction and Operation—In Custer, Powder River, and Rosebud Counties, MT	3/24/86
9. Ex Parte No. 445 (Sub-No. 1)	Intramodal R&I Competition	6/2/85
10. Ex Parte No. 320 (Sub-No. 3)	Product and Geographic Competition	None
11. Ex Parte No. 387 (Sub-No. 958)	Exemption from Regulation—Shipments Subsequently Made Subject to a Contract Rate	None
12. Ex Parte No. 397	Exemption of Railroads From Securities Regulation Under 49 U.S.C. 11301.	None

OTHER BUREAUS AND OFFICES

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 290 (Sub-No. 2)	Railroad Cost Recovery Procedures—Proposed All Inclusive Index	None
2. Ex Parte No. 290 (Sub-No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment	None
3. Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines—Nationwide	None
4. Ex Parte No. 393 (Sub-No. 1)	Standards for Railroad Revenue Adequacy	None
5. Ex Parte No. 399	Cost Recovery Percentage	None
6. Ex Parte No. 431	Adoption of the Uniform Railroad Costing System	None
7. Ex Parte No. 458	Railroad Cost of Capital—1984	None
8. Ex Parte No. 455	Revision to the Uniform System of Accounts for Railroads	None

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OTHER BUREAUS AND OFFICES

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
9. Ex Parte No. 460	Certification of Railroad Annual Report R-1 by Independent Accountant	None
10. Docket No. 38904	Elimination of Accounting and Reporting Requirements for Motor Carriers of Property	None
11. Docket No. 38590	Revision to Railroad Annual Report Form R-1	None
12. Docket No. 39953	Elimination of Accounting and Reporting Requirements for Motor Carriers of Passengers	None
13. Ex Parte No. 444	Electronic Filing of Tariffs	None
14. Ex Parte No. MC-5 (Sub-No. 3) and Ex Parte No. 159	General Investigation and Revocation Procedures Governing Failure to File or Maintain Prescribed Insurance or Other Security for Brokers and Freight Forwarders	None
15. Ex Parte No. MC-19 (Sub-No. 36)	Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)	None

TABLE 4.—Informal proceedings

	<i>Fiscal Year 1983</i>	<i>Fiscal Year 1984</i>	<i>Fiscal Year 1985</i>
Applications for motor temporary authority			
Filed	4,623	3,620	2,694
Disposed of	4,711	3,776	2,713
Pending at end of year	314	158	139
Petitions in application for motor carrier temporary authority (received at headquarters)			
Filed	311	240	71
Disposed of	402	244	103
Pending at end of year	44	40	8

TABLE 5.—Certificates issued for abandonment, construction, acquisition and operation of rail lines (these figures reflect abandonment applications filed by bankrupt carriers and Conrail for fiscal years 1984 and 1985 under North East Rail Service Act (NERSA)).

	<i>Fiscal Year 1983</i>		<i>Fiscal Year 1984</i>		<i>Fiscal year 1985</i>	
	<i>Appli- cations</i>	<i>Miles</i>	<i>Appli- cations</i>	<i>Miles</i>	<i>Appli- cations</i>	<i>Miles</i>
1. Abandonment applications filed	178*	3,702	472**	3,878	138***	2,877.23
Certificate of abandonment						
Granted	123	2,454	419	3,083	148	2,342.63
Denied	2	28	7	548	3	102.85
Dismissed	7	91	5	69	30	656.88
2. Construction applications filed	1	89	0	0	7†	98.75
Granted	0	0	0	0	5	171.00
Denied	0	0	0	0	0	0
Dismissed	2	64.5	0	0	1	0.25
3. Acquisition and operation appli- cations filed	0	0	0	0	1	15.35
Granted	0	0	0	0	0	0
Denied	1	43.9	0	0	0	0
Dismissed	1	3.2	0	0	1	28.0

* 46 were Conrail filings.

** 358 were Conrail filings.

*** 29 were Conrail filings.

† Includes 4 remanded by Court.

TABLE 6.—Tariff schedules, fiscal year 1985

	Received	Criticized	Rejected
Freight			
Common Carrier Tariffs:			
Rail	63,687	59	90
Motor	1,180,153	4,951	9,727
Water	24,402	24	143
Freight Forwarder	25,805	36	77
International Ocean-Land Intermodal	157,891	0	6
Total	1,451,938	5,070	10,043
Contract Carrier Filings:			
Rail Contracts	20,913	451	1
Passenger tariffs:			
Rail	440	0	0
Motor	5,207	32	97
Water	100	0	0
Total Passenger	5,747	32	97
Grand Total	1,478,598	5,553	10,141

SPECIAL PERMISSION APPLICATIONS

Received	Granted	Denied	Grant/Denied in Part	Withdrawn
2,724	2,059	23	429	213

TABLE 7.—Action taken on proposals (protested and non-protested) considered for suspension and/or investigation.

Suspensions—Fiscal Year 1985						
	Rail	Motor	Water	Fght. Fwdr.	Total No.	Per- cent
Suspended in full	0	5	0	0	5	6.5
Suspended in part	0	1	0	0	1	1.3
*Not suspended or investigated	19	36	0	0	55	71.4
**Not suspended but investigated	2	1	0	0	3	3.9
**Otherwise disposed of	9	3	1	0	13	16.9
Total	30	46	1	0	77	100.0

* Permitted to become effective.

** Schedules canceled or rejected, protests withdrawn or filed too late.

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TABLE 8.—Informal rate cases branch (Bureau of Traffic—fiscal year 1985)

Rate Cases General:	
On hand beginning of year	67
Received during year	7179
Disposed of during year	7146
Pending at end of year	100
Informal Complaints:	
On hand beginning of year	24
Received during year	22
Disposed of during year	35
Pending at end of year	11
Decisions—Statement of Claimed Damages (49 CFR 1133.2):	
On hand beginning of year	1
Received during year	0
Disposed of during year	1
Pending at end of year	0
Special Dockets Board:	
On hand beginning of year	74
Received during year	525
Disposed of during year	528
Pending at end of year	71

TABLE 9.—ICC Unit of the National Defense Executive Reserve (NDER)

NDER Group	Fiscal Year 1983	Fiscal Year 1984	Fiscal Year 1985
	On Roll	On Roll	On Roll
Rail	483	483	483
Motor	104	104	105
Water	33	33	33

TABLE 10.—Car Supply—Cars Installed, Retired, and Ordered, Class I Railroads

	Fiscal Year			
	1970	1975	1980	1985
Cars Installed:				
Box	24,243	13,060	7,646	0
Refrigerator	6,541	2,180	126	2
Gondola	6,888	4,928	5,456	703
Hopper	10,999	10,075	9,656	125
Covered Hopper	5,887	7,143	9,002	100
Flat	2,875	2,037	1,036	69
Other	379	240	970	0
Total Cars	57,812	39,663	33,892	999
Cars Retired:				
Box	26,682	25,112	35,112	28,902
Refrigerator	5,668	1,260	2,882	9,403
Gondola	11,066	7,830	8,883	12,060
Hopper	21,366	1,572	18,796	31,133
Covered Hopper	2,178	3,328	3,114	5,089
Flat	1,028	5,965	3,451	412
Other	4,175	1,626	2,338	1,533
Total Cars	72,163	72,223	74,576	88,532
Cars Ordered:				
Box	9,232	9,171	3,911	0
Refrigerator	3,890	350	46	0
Gondola	6,584	7,251	5,302	240
Hopper	11,883	20,279	6,289	125
Covered Hopper	8,709	4,164	7,652	100
Flat	6,299	3,571	512	67
Other	8,453	6,628	320	0
Total Cars	55,050	51,414	24,032	532

TABLE 11.—Ownership, Serviceable Ownership, and Turnaround Time, Class I Railroads

	Fiscal Year			
	1970	1975	1980	1985
Ownership:				
Plain Box	380,227	315,006	187,578	96,921
Equipped Box	163,295	171,002	166,898	126,279
Total Box	543,522	486,008	354,466	223,200
Refrigerators	100,502	83,951	62,952	42,220
Gondolas	190,356	176,154	151,709	112,963
Hoppers	392,015	344,113	317,805	241,434
Covered Hoppers	128,577	156,198	169,953	155,794
Flat	72,048	97,948	96,667	84,595
Other	51,365	37,464	26,938	19,084
Total Cars	1,478,385	1,381,836	1,180,490	879,290
Serviceable Cars:				
Plain Box	349,544	280,751	164,170	82,190
Equipped Box	155,287	152,503	143,037	104,701
Total Box	504,831	433,254	309,207	186,891
Refrigerators	96,841	77,585	57,850	38,046
Gondolas	177,861	163,075	136,375	104,317
Hoppers	375,884	327,141	297,400	223,138
Covered Hoppers	124,605	147,144	159,753	142,541
Flat	67,764	91,709	89,861	79,746
Other	49,214	35,696	25,412	17,896
Total Cars	1,396,900	1,275,606	1,075,858	792,577
	Calendar Year			
	1969	1974	1979	1984
Turnaround Time—Days:				
Box	21.7	25.0	31.2	40.3
Refrigerators	33.6	34.0	35.9	52.3
Gondolas	19.3	18.3	21.1	20.3
Hoppers	13.9	13.3	14.3	14.7
Covered Hoppers	20.7	22.4	25.5	30.4
Flat	12.4	13.7	15.0	12.5
Average All Cars	18.4	19.6	22.1	22.8

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TABLE 12.—Extension of Time Limits—Rail Proceedings, Fiscal Year 1985

<i>Proceeding</i>	<i>Type of Proceeding</i>	<i>Notification of Extension</i>	<i>Reason and Duration</i>
No. 38412S, Allied Chemical Corporation, et al. v. Ann Arbor Railroad System, et al.	Complaint	January 11, 1985	90-day extension because of complex legal issues, including difficult jurisdictional issue as to whether the railroads have market dominance over movements
No. 39038, The Aluminum Association, Inc., et al. v. Alton & Southern Railway Company, et al. (embracing No. 39065, Reynolds Metal Company v. The Atchison, Topeka and Santa Fe Railway, et al.)	Complaint	February 7, 1985	90-day extension to allow for completion of revised rules in Ex Parte No. 394 (Sub-No. 1), <i>Cost Ratio for Recyclables—1983 Determination</i> , which provides a more appropriate forum for resolution of the issues involved.
No. 39324, Pozzolan International v. Burlington Northern Railroad Company, et al.	Complaint	February 14, 1985	90-day extension to allow for completion of revised rules in Ex Parte No. 394 (Sub-No. 1), <i>Cost Ratio for Recyclables—1983 Determination</i> , which provides a more appropriate forum for resolution of the issues involved.
No. 38025S, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company	Complaint	February 15, 1985	90-day extension because of complex legal issues.
No. 39176 (Sub-No. 1), Pittsburgh & Lake Erie Railroad Co. v. Consolidated Rail Corporation	Complaint	March 4, 1985	Indefinite extension to consider for the first time complex legal issues.
No. 38412S, Allied Chemical Corporation, et al. v. Ann Arbor Railroad System, et al.	Complaint	April 2, 1985	Indefinite extension to consider complex legal issues.
No. 30214, Railroad Car Service and Car Hire Pooling Agreement	Pooling Agreement	April 25, 1985	45-day extension because of complex legal issues.

TABLE 12.—Extension of Time Limits—Rail Proceedings, Fiscal Year 1985

<i>Proceeding</i>	<i>Type of Proceeding</i>	<i>Notification of Extension</i>	<i>Reason and Duration</i>
No. 39647, Newell Recycling Co., inc. v. Norfolk Southern Corporation, et al.	Complaint	May 1, 1985	Indefinite extension to allow for completion of revised rules in Ex Parte No. 394 (Sub-No. 1), <i>Cost Ratio for Recyclables—1983 Determination</i> , which provides a more appropriate forum for resolution of the issues involved.
No. 38025S, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company	Complaint	May 17, 1985	60-day extension to consider complex legal issues.
No. 39690, Schuylkill Metals Corporation v. Kansas City Southern Company, et al.	Complaint	June 10, 1985	Indefinite extension to allow for completion of revised rules in Ex Parte No. 394 (Sub-No. 1), <i>Cost Ratio for Recyclables—1983 Determination</i> .
No. 39176 (Sub-No. 2), Soo Line Railroad Company v. Chicago and North Western Transportation Company	Complaint	August 9, 1985	120-day extension because of the complex legal issues and the pendency of Ex Parte No. 445 (Sub-No. 1), <i>Intramodal Rail Competition</i> .

APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. Additionally, the Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. For convenience, the GPO stock number has been included. Price information may be obtained by writing to:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402
Telephone: (202) 783-3238.

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Bureau of Accounts (AC)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Compliance and Consumer Assistance (OCCA)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Public Affairs (PA)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of the Secretary (SE)
Publications Room (Rm. B-221)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Transportation Analysis (OTA)
Interstate Commerce Commission
Washington, D.C. 20423
- Small Business Assistance Office (SBAO)
Interstate Commerce Commission
Washington, D.C. 20423

- Office of the Special Counsel (OSC)

Interstate Commerce Commission
Washington, D.C. 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Bureau of Accounts' Public Reference Room, Room 3378, from 8:30 a.m. to 5:00 p.m. weekdays. Photocopies of these reports, at a cost of 60 cents per page, with a \$3.00 minimum charge per order, can be obtained by writing to the Office of the Secretary, Room 2215, ICC, Washington, D.C. 20423.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to 90 days from the date of service from TS Infosystems, Inc. (TSI), Room 2229, ICC, Washington, D.C. 20423, or by calling (toll-free) 800-424-5403 or (202) 289-4357. Printed reports in the "ICC" and "MCC" series are also available from the Commission's Publications Room while supplies last. Printed reports in the "ICC 2nd Series" only are available through TSI.

CONSUMER PUBLICATIONS

OCP-100 Household Goods Information—OCCA

This booklet explains consumer rights when moving household goods across state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress

91st 1977 (026-000-01096-9)*

92nd 1978 (026-000-01135-3)*

93rd 1979 (026-000-01176-1)*

94th 1980 (026-000-01195-7)*

95th 1981 (026-000-01225-2)*

96th 1982

97th 1983 (026-000-01238-4)*

98th 1984 (026-000-01247-3)*

Code of Federal Regulations, Title 49, Revised to October 1984

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures.(022-003-94228-9)*

Parts 1200-1299: Uniform system of accounts destruction of reports, valuation. (022-033-94229-7)*

Parts 1300-End: Passenger freight tariffs and schedules, credit regulations. (022-033-94230-1)*

Interstate Commerce Act

Available from the Government Printing Office in U.S.Code, 49 U.S.C. Sec. 10101 et seq.*

ICC Register

A daily summary of motor carrier applications and of decisions and notices issued by the ICC. Subscription information is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Can They Do That? Administrative Ruling No. 119—OCCA

Department of Transportation and State Regulations—Bulletin No. 9—SBAO

Filing Your Tariff—Bulletin No. 8—SBAO

Government Traffic—Bulletin No. 3—SBAO

Guide to Applying for Permanent Operating Authority: Passengers—SBAO (October 1984)

Guide to Applying for Permanent Operating Authority: Property—SBAO (March 1985)

Guide to Applying for Temporary or Emergency Temporary Operating Authority—SBAO (October 1984)

Guide to Filing Protests, Replies and Appeals—Bulletin No.6—SBAO

Highlights of the Bus Regulatory Reform Act of 1982—Bulletin No. 2—SBAO

Highlights of the Motor Carrier Act of 1980—Bulletin No. 1—SBAO

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982—OSC

Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act—OSC

Illegal Lumping—OCCA

Addresses illegal "lumper" practices

Lease-Purchase Plan—SBAO

Loss and Damage Claims! Can You Collect?—OCCA

Owner Operator Food Transportation—Bulletin No. 4—SBAO

Sample Caption Summaries—Bulletin No. 7—SBAO

Self-Help Against Unauthorized Operations—OCCA

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So You Want to Start a Small Railroad—ICC Small Railroad Application Procedures—SEAC (February 1985)

Speeches and Statements—PA

ICC Commissioners' speeches or statements before congressional committees may be obtained on an individual basis from the Office of Public Affairs, Room 1211, ICC, Washington, D.C. 20423. Telephone (202) 275-7252.

State Regulatory Commissions and Fuel Tax Divisions—Bulletin No. 10—SBAO

SPECIALIZED PUBLICATIONS

Motor

An Analysis of Rates and Costs in the Motor Carrier Industry—OTA (April 1980)

Case Studies of Small Community General Freight Service—OTA (Semi-monthly)

Consequences of Motor Carrier Deregulation on Fuel Efficiency—OTA

Thomas Corst, Asst. Prof., University of Maryland, Merrill Roberts, Prof., University of Maryland (September 28, 1979)

Cost of Transporting Freight, by Class 1 and Class 11 Motor Common Carriers of General Commodities, 1979—AC

Customer Pickup of Food and Grocery Products Under Section 8 of the Motor Carrier Act of 1980—OTA (June 29, 1984).

The Effect of Regulatory Reform on the Trucking Industry: Structure, Conduct and Performance—Preliminary Report—OTA (June 1981)

The Effects of Recession on the Motor Carrier Industry—OTA (June 1981)

Empty/Loaded Truck Miles on Interstate Highways During 1976—OTA (April 1977)

An Evaluation of Charges that Regulatory Reform Will Degrade Small Community Motor Carrier Service—OTA (March 1980)

Financial and Economic Rate Analysis of the Motor Carrier Industry Volume 11—R.L. Banks & Associates, Inc., October 2, 1979—OTA

Highlights of Recent Activity in the Motor Carrier Industry—OTA (December 4, 1980)

Highway Form B—AC

Information for single-line and interline shipments, Statement No. 2E1-82

The ICC and Owner-Operators: The Fuel Surcharge Program—OTA (April 1982)

The ICC and Owner-Operators: Leasing Rules and Modifications—OTA (April 1982)

Some Implications for Motor Carrier Regulatory Reform—OTA (April 1980)

The Independent Trucker: A Nationwide Survey of Owner-Operators—OTA (1978)

Independent Trucker: Follow-Up Survey of Owner-Operators—OTA (November 1979)

Initial Carrier and Shipper Responses to Intrastate Trucking Deregulation in Florida—OTA (June 1980)

Initial Paper: Regulatory Reform for the General Commodity Segment of

the Motor Carrier Industry—OTA
(January 1980)

Initial Report of the Motor Carrier Task Force, May 1979—OTA

Report and recommendations of a staff task force on improving motor carrier regulation.

The Intercity Bus Terminal Study—OTA (December 1984)

Minority and Female Motor Carrier Listings—OTA (September 1983)

Minority Motor Carriers: Status and Prospects—OTA (March 1982; 2nd ed. June 1985)

Motor Carrier Computerized Costing Program—SE

Computerization of the manual method used for determining motor carrier cost for individual freight movements. Statement No. 2E4-79.

Motor Carrier Monitoring Program: Initial Notes from Carrier Contact and Sources—OTA (June 1981, November 1981, June 1982, July 1983)

Motor Carrier Platform Study—SE

Determination of the minutes per hundredweight in handling freight across a motor carrier platform. Statement No. 2S1-79 (July 1979)

The New Region One Motor Carrier—A Descriptive Profile

Prepared by Region 1 Motor Carrier staff, Boston, MA (June 1981)

Owner-Operators and the Motor Carrier Act of 1980—OTA (February 1982)

Owner-Operators: Single Versus Multiple Unit Fleet Owners—OTA (June 1982)

Owner-Operator Turnover between 1977-1980—OTA (June 1982)

Potential Benefits of Increased Price Competition in the Motor Carrier Industry—OTA (September 1980)

Selected Statistics of Class 11 Motor Carriers of Property—SE (Calendar 1983)

Small Community Service Study, As Mandated by Section 28 of the Motor Carrier Acts—OTA (September 1, 1982)

Transport Statistics in the U.S. Motor Carriers—SE

(First Release, Part 2, 1984)

(Second Release, Part 2, 1983)

Uniform State Regulations—Motor Carrier Act of 1980, Section 19, Report to Congress—OTA (December 1982)

Rail

Class 1 Line-Haul Railroads, Selected Earnings Data—SE (Quarterly)

Conrail Abandonment Brochure—OTA

Contract Advisory Service Summaries of Contracts Filed with the Commission—OTA (Quarterly)

Exempt Rail Transportation of Fresh Fruits and Vegetables: Initial Impact—OTA

Guidelines for Evaluating the Feasibility of Short Line Operations—OTA (August 1982)

The Prospect of Reorganizing the Milwaukee Road as a Viable Carrier—OTA

Railroad Abandonment Brochure—OTA

Railroad Transportation Contracts (ICC rules and procedures) Ex Parte No. 387—OTA (October 1982)

Regressions for Railroad Cost Analysis—OTA (August 1977, ECMS-6)

Report of Railroad Employment Class 1 Line-Haul Railroads—SE

Statement No. M-350 (Monthly)

Report on Railroad Contract Rates Authorized by Section 208 of the Staggers Rail Act of 1980—OTA (March 1984)

Staff Report on Directed Rail Services—OTA (May 1984)

A Study to Perform an In-Depth Analysis of Market Dominance and Its Relationship to Other Provisions of the 4-R Act—OTA

Transport Statistics in the U.S. Railroads (First Release, 1984)—SE

Wage Statistics of Class 1 Railroads in the U.S.—SE Statement No. A-300 (Calendar 1984)

General

The Commission's Bureau of Accounts publishes quarterly reports on selected earnings data: SE

- *Large Class 1 Motor Carriers of Property;*
- *Large Class 1 Motor Carriers of Passengers; and*
- *Large Class 1 Household Carriers*

Early Experience with Airline Deregulation—OTA (April 1980)

Financial Management Information Package—SE

• Informs small transportation businesses, especially new trucking firms, on ways to deal more effectively with the business aspects of their operations (1981).

Report of the Bus Industry Study Group, Interstate Commerce Commission, October 1979—OTA

APPENDIX D

Appropriations and Employment

The following statement shows average full time employment and total appropriations for the fiscal years 1951 to 1985 for activities included under the current appropriation title "Salaries and Expenses."

Year	Appropriation	Average Employment	Year	Appropriation	Average Employment
1951.....	\$11,408,200	2,072	1969.....	24,664,000	1,808
1952.....	11,264,035	1,890	1970.....	27,742,660	1,802
1953.....	11,003,500	1,849	1971.....	28,442,000	1,731
1954.....	11,284,000	1,838	1972.....	30,640,000	1,676
1955.....	11,679,655	1,859	1973.....	33,720,000	1,765
1956.....	12,896,000	1,902	1974.....	40,681,000	1,874
1957.....	14,879,696	2,090	1975.....	44,970,000	1,986
1958.....	17,412,375	2,238	1976.....	52,455,000	2,034
1959.....	16,747,800	2,268	TQ.....	12,290,000	2,113
1960.....	19,650,000	2,344	1977.....	60,786,000	2,084
1961.....	21,451,500	2,386	1978.....	65,575,000	2,040
1962.....	22,075,000	2,400	1979.....	70,400,000	2,040
1963.....	23,502,800	2,413	1980.....	79,063,000	1,946
1964.....	24,670,000	2,408	1981.....	82,400,000	1,852
1965.....	26,715,000	2,339	1982.....	70,150,000	1,540
1966.....	27,540,000	2,376	1983.....	65,600,000	1,319
1967.....	27,169,000	1,929	1984.....	60,000,000	1,156
1968.....	23,846,000	1,899	1985.....	51,100,000	915

Status of Appropriations

Status of Fiscal Year 1985 appropriations as of September 30, 1985:

Salaries and Expenses:	
Total Appropriations ..	\$51,100,000
Reimbursements	143,517
Total Obligations	50,440,184
Unobligated balance lapsing	803,333
Directed Rail Service:	
Unobligated balance available from prior appropriation	2,352,920
Total Obligations:	
Payments to carriers	—0—
Recoveries of prior years obligations	—0—
Unobligated balance available (end of year)	2,352,920

Receipts

Status of receipt accounts as of September 30, 1985:

Registration and filing fees		\$4,505,200
Fines, penalties & forfeitures		643,579
Service charges for allotments of pay for savings account		—0—
Charges for administrative services		49,233
Recoveries from railroad loan guarantees		—0—
Miscellaneous recoveries and refunds		2,169
Withholding for military benefits		—0—
Total Receipts		5,200,181

APPENDIX E

Carrier Financial and Statistical Data

TABLE 1.—Carriers regulated by the Commission

	<i>Number</i>
Carriers subject to Uniform System of Accounts and required to file annual and periodic reports as of December 31, 1985:	
Railroads, class I ¹	29
Motor carriers, class I passenger ²	60
Motor carriers, class I property ³	1,013
Motor carriers, class II property ⁴	1,489
Total	2,591
Carriers filing annual reports but not subject to prescribed Uniform System of Accounts as of December 31, 1985:	
Holding companies (rail)	3
Carriers and organizations not subject to filing annual reports as of December 31, 1985:	
Railroads, class II ⁵	25
Railroads, class III ⁶	337
Railroads, switching and terminal companies	131
Railroad lessor companies	83
Stockyard companies	16
Carlines (companies which furnish cars for use on lines of railroads)	158
Holding companies (motor)	67
Motor carriers of passengers, other than class I	3,460
Classes I and II motor carriers of property relieved from reporting requirements of classes I or II	444
Class III motor carriers of property	30,337
Water carriers	277
Maritime carriers	6
Freight forwarders	265
Rate bureaus and organizations	69
Coal slurry pipeline company	1
Protective service companies	6
Total	35,682
Grand Total	38,276

¹ Railroad companies having adjusted annual operating revenues of \$50,000,000 or more for three consecutive years.

² Motor carriers having annual operating revenues in excess of \$3,000,000.

³ Motor carriers having adjusted annual operating revenues in excess of \$5,000,000 for three consecutive years.

⁴ Motor carriers having adjusted annual operating revenues less than \$5,000,000 but in excess of \$1,000,000 for three consecutive years.

⁵ Railroad companies having adjusted annual operating revenues less than \$50,000,000 but in excess of \$10,000,000 for three consecutive years.

⁶ Railroad companies having adjusted annual operating revenues less than \$10,000,000 for three consecutive years.

TABLE 2.—Recapitulation of preliminary 1984 operating revenues, net investment and taxes (dollars in thousands)

<i>Kind of carrier</i>	<i>Number of Carriers Represented¹</i>	<i>Operating Revenues</i>	<i>Net Investments</i>	<i>Income taxes on Ordinary Income²</i>
Railroads—class I line haul...	31	\$29,288,992	\$45,291,399	\$1,099,718
Motor carriers of property— class I intercity	832	35,820,228	8,206,028	636,787
Motor carriers of passengers— class I intercity	43	1,254,860	596,729	9,947
Total	906	66,364,080	54,094,156	1,746,452
Percentage distribution				
Railroads—class I line haul...	3.4	44.1	83.7	63.0
Motor carriers of property— class I intercity	91.8	54.0	15.2	36.4
Motor carriers of passengers— class I intercity	4.8	1.9	1.1	0.6
Total	100.0	100.0	100.0	100.0

¹ Carriers for which preliminary financial and statistical data were available.² Federal income taxes and provisions for deferred taxes only for railroads; all other carriers include Federal and State income taxes, and provisions for taxes.

TABLE 3.—Class I line-haul railroads shareholder's equity, long term debt and dividends (dollars in thousands)

Item	1982	1983	1984
1. Shareholders' equity:			
a. Capital stock	\$4,406,990	\$4,229,805	\$4,176,032
b. Capital surplus	6,247,081	6,503,950	6,562,185
c. Retained income	14,919,829	16,085,155	17,683,347
d. Total equity	25,573,900	26,818,910	28,421,564
2. Long-term debt	12,000,193	11,494,414	11,178,862
3. Total equity and debt	37,574,093	38,313,324	39,600,426
4. Ratio to debt of equity (percent)	31.94	30.00	28.23
5. Amount of dividends ¹			
a. Cash	1,109,469	1,114,486	1,123,747

¹ Includes duplications on account of intercorporate payment.

NOTE: The data shown above are based upon ratable depreciation accounting for track structures (DA), which the Commission prescribed beginning with financial data filed by railroads for the year 1983 (Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures*, 367 ICC 157). The railroads in their 1983 Annual Reports Form R-1 were also required to restate on a DA basis certain data for each of the years 1979 through 1982. Consequently, restated data to reflect DA for 1982 are reflected above in retained income.

For purposes of comparability and consistency, the data shown above exclude Boston and Maine Corporation and Delaware and Hudson Railway Company, which received waivers from the Commission for adoption of DA for all or a portion of 1983. The Detroit, Toledo and Ironton Railroad Company, which merged into the Grand Trunk Western Railroad Company on December 31, 1983, is also excluded because restated data for 1982 were not available.

TABLE 4.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1982	1983	1984
1. Number of carriers represented	31	29	29
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight	\$25,098,648	\$25,366,335	\$26,077,394
b. Passenger	372,664	106,539	101,189
c. Total operating revenues	26,555,229	26,263,605	29,040,737
3. Total operating expenses	24,636,643	23,673,216	25,445,005
4. Railway tax accruals	2,152,263	2,103,205	2,591,907
5. Net railway operating income	1,381,189	1,627,737	2,513,561
6. Ordinary income	1,838,712	1,843,039	2,793,986
7. Extraordinary items—Net ¹	—	19,567	-455
8. Net income	1,838,712	1,862,606	2,793,531
NET INVESTMENT AND EQUITY			
9. Net investment in transportation property and equipment plus working capital	N/A	42,889,644	45,164,745
10. Shareholders' equity	25,573,900	26,818,910	28,421,564
FINANCIAL RATIOS (PERCENT)			
11. Operating ratio (L. 3 ÷ L. 2c)	92.78	90.14	87.62
12. Return on net investment (L. 5 ÷ L. 9)	N/A	4.26	5.57
13. Return on equity:			
a. Ordinary income basis (L. 6 ÷ L. 10)	7.19	6.87	9.83
b. Net income basis (L. 8 ÷ L. 10)	7.19	6.95	9.83
EMPLOYEE DATA			
14. Average number	365,336	317,119	319,061
15. Compensation:			
a. Total	\$10,640,599	\$10,192,713	\$10,871,868
b. Per hour paid for	12.251	13.296	13.848

¹ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

NOTE: The data shown above are based upon ratable depreciation accounting for track structures (DA), which the Commission prescribed beginning with financial data filed by railroads for the year 1983 (Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures*, 367 ICC 157). The railroads in their 1983 Annual Reports Form R-1 were also required to restate on a DA basis certain data for each of the years 1979 through 1982. Conse-

quently, restated data to reflect DA for 1982 are reflected above in operating expenses, net railway operating income, ordinary income, net income, shareholders' equity and return on equity.

For purposes of comparability and consistency, the data shown above exclude Boston and Maine Corporation and Delaware and Hudson Railway Company, which received waivers from the Commission for adoption of DA for all or a portion of

1983. The Detroit, Toledo and Iron-
ton Railroad Company, which
merged into the Grand Trunk West-
ern Railroad Company on December
31, 1983, is also excluded because
restated data for 1982 were not avail-
able.

No amounts are shown for 1982
for net investment in transportation
property (line 9) and return on net
investment (line 10) because the rail-
roads were not required to restate
prior years' net investment data on a
DA basis.

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TABLE 5.—Class I line-haul railroads' current assets and current liabilities as of December 31, 1983 and 1984 (dollars in thousands)

<i>Item</i>	<i>1983 Amount</i>	<i>Percent of Change</i>	<i>1984 Amount</i>	<i>Percent of Change</i>
Total current assets	\$8,860,563	+ .1	\$9,822,490	+ 10.9
Cash and temporary cash investments	2,582,273	- 8.9	3,226,484	+ 24.9
Materials and supplies	1,180,843	- 20.8	1,325,519	+ 12.3
Total current liabilities	7,533,419	+ 6	7,963,900	+ 5.7
Net working capital:				
Including materials and supplies	1,327,144	- 2.9	1,858,590	+ 40.0
Excluding materials and supplies	146,301	—	533,071	+ 264.4
Ratios:				
Current assets to current liabilities:				
Including materials and supplies	1.18		1.23	
Excluding materials and supplies	1.02		1.07	
Cash and temporary cash investments to current liabilities34		.41	

TABLE 6.—Class I intercity motor carriers of property condensed income statement, financial ratios, and employee data (dollars in thousands)

Item	1982	1983	1984 ¹
1. Number of carriers represented	957	923	832
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight-intercity-common carrier	\$27,996,947	\$29,267,511	\$30,480,633
b. Freight-intercity-contract carrier	1,500,357	1,758,872	2,083,548
c. Freight-local cartage	306,835	305,981	332,758
d. Intercity transportation for other motor carriers	210,421	227,229	188,160
e. Other operating revenue	2,231,879	2,339,860	2,735,049
f. Total operating revenues	32,246,439	33,899,453	35,820,228
3. Operating expenses	31,336,901	32,090,546	34,099,863
4. Lease of distinct operating unit—net	1,285	1,632	1,778
5. Net carrier operating income	910,823	1,810,539	1,722,143
6. Other income and miscellaneous deductions from income—net	-172,916	-141,688	-183,510
7. Income taxes on ordinary income ²	366,467	701,872	636,787
8. Ordinary income	371,440	966,979	901,846
9. Extraordinary items—net ³	20,475	47,544	65,298
10. Net income	391,915	1,014,523	967,144
NET INVESTMENT AND EQUITY			
11. Net investment in carrier operating property and equipment plus working capital	7,200,555	7,628,646	8,206,028
12. Shareholders' and proprietors' equity	5,374,951	5,978,079	6,451,402
FINANCIAL RATIOS (PERCENT)			
13. Operating ratio (L. 3 ÷ L. 2f)	97.18	94.66	95.20
14. Return on net investment (L. 5 ÷ L. 11)	12.65	23.73	20.99
15. Return on equity (L. 10 ÷ L. 12)	7.29	16.97	14.99
EMPLOYEE DATA			
16. Average number	484,607	475,700	498,356
17. Compensation	\$12,333,825	\$12,491,002	\$13,159,685

¹ Preliminary.² Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code, and does not include income taxes on extraordinary items. Includes provision for deferred taxes.³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 7.—Class I intercity motor carriers of passengers' condensed income statement, financial ratios, and employee data (dollars in thousands)

Item	1982	1983	1984 ¹
1. Number of carriers represented	45	45	43
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Passenger intercity schedules	\$961,198	\$872,311	\$861,359
b. Local and suburban schedules	5,249	3,652	3,302
c. Charter on special service	199,686	180,362	176,763
d. Other operating revenue	247,885	220,144	213,436
e. Total operating revenues	1,414,018	1,276,469	1,254,860
3. Operating expenses	1,366,200	1,283,249	1,254,250
4. Lease of carrier property—net	188	187	74
5. Net carrier operating income	28,006	-6,593	684
6. Other income and miscellaneous deductions—net	6,680	23,031	52,170
7. Income taxes on ordinary income ²	-1,325	-9,560	9,947
8. Ordinary income	36,011	25,998	42,907
9. Extraordinary items—net ³	4,641	10,791	4,358
10. Net income	31,370	36,789	47,265
NET INVESTMENT AND EQUITY			
11. Net investment in carrier operating property and equipment plus working capital	655,374	665,221	596,729
12. Shareholders' and proprietors' equity	610,677	627,225	631,856
FINANCIAL RATIOS (PERCENT)			
13. Operating ratio (L. 3 ÷ L. 2e)	98.03	100.53	99.95
14. Return on net investment (L. 5 ÷ L. 11)	4.27	—	0.11
15. Return on equity (L. 10 ÷ L. 12)	5.14	5.87	7.48
EMPLOYEE DATA			
16. Average number	28,783	25,020	24,674
17. Compensation	\$634,091	\$570,420	\$551,067

¹ Preliminary.² Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code, also does not include income taxes on extraordinary items. Includes provision for deferred taxes.³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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